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IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO. 16-2017-CA-007080
DIVISION CV-D

JACKSONVILLE LANDING
INVESTMENTS, LLC, a Florida limited
liability company,

Plaintiff,

v.

CITY OF JACKSONVILLE, a Florida
municipal corporation,

Defendant.

_______________________________________/

CITY OF JACKSONVILLE'S MOTION TO DISMISS AND
FOR MORE DEFINITE STATEMENT

Defendant, City of Jacksonville (the "City"), moves pursuant to Rule 1.140(b)(6) and (e) of the Florida Rules of Civil Procedure to dismiss the Complaint filed against it by Plaintiff, Jacksonville Landing Investments, LLC ("JLI"), for failure to state a cause of action and for a more definite statement.

I. BACKGROUND

This case is about JLI's mismanagement of the Jacksonville Landing, the centerpiece of our downtown and an icon of the City. By a letter dated October 17, 2017, the City notified JLI that it is in breach of its lease due to its obvious failure to operate the Landing as a "first-class retail facility," [1] as the lease requires. In accordance with the lease, the City gave JLI thirty days to begin to take steps to improve the depressing state of the Landing and remedy its breach.[2]

[1] As JLI tacitly admits through its Complaint, one need only visit the Landing to know that it is not currently a "first-class retail facility."

[2] A copy of the October 17, 2017 notice letter to JLI, which is referred to in ¶16 of the Complaint, is attached as **Exhibit "A."**

Unfortunately, JLI chose to do no such thing. Instead, on the thirtieth day after the City's letter, it launched an all-out "media blitz" of blame-shifting, complete with misleading press-releases, the creation of the ironically named "Landing Facts" website, and an appearance on the local nightly news by its lawyer.[3] At the center of this campaign is JLI's "Complaint," which reads more like a public-relations piece than a complaint. The Complaint is little more than a laundry list of stale grievances, false and incomplete assertions, and gratuitous and self-serving statements. None of it presents a serious or meritorious legal claim against the City.

The issue before the Court is not whether JLI has succeeded in its public-relations goals, but whether its Complaint states a cause of action and whether a more definite statement is required. The Complaint is framed in five counts: Count I for declaratory relief; Count II for specific performance; Count III for breach of the covenant of quiet enjoyment; Count IV for breach of the Lease Agreement; and Count V for promissory estoppel. While the Court must generally accept JLI's allegations as true for the purposes of this motion (even where they are not true), the Court need not accept those allegations that are contradicted by the exhibits attached to the Complaint or those that are vague or conclusory. Striton Props., Inc. v. City of Jacksonville Beach, 533 So. 2d 1174, 1179 (Fla. 1st DCA 1988) ("[I]f an attached document negates a pleader's cause of action, the plain language of the document will control and may be the basis for a motion to dismiss."); Barrett v. City of Margate, 743 So. 2d 1160, 1163 (Fla. 4th DCA 1999) ("It is insufficient to plead opinions, theories, legal conclusions or argument."); Loving v. Viecelli, 164 So. 2d 560, 561 (Fla. 3d DCA 1964) ("Every fact essential to the cause of action must be stated distinctively, definitely and clearly."). As set forth below, the Complaint should be dismissed due to its numerous deficiencies and defects.

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[3] All of which occurred before the City was actually served with the Complaint.

II. JLI'S ALLEGATIONS ARE CONTRADICTED BY THE TERMS OF THE PARTIES' AGREEMENTS

The Complaint repeatedly describes the City as JLI's "public partner" and accuses the City of failing to do things that it actually has no contractual obligation to do. In reality, the relationship between the City and JLI is that of a landlord and tenant and is governed by the Lease Agreement (as defined in the Complaint and attached as Exhibit A thereto).[4] The City is not JLI's partner, nor could it be, as the Lease Agreement and Florida law expressly preclude such a relationship. (Lease Agreement § 19.1; Comp. ¶ 10).[5] The Lease Agreement was originally entered into with Rouse-Jacksonville, LLC ("Rouse") and later assigned by Rouse to JLI. It has been amended six times, the last time (the "Sixth Amendment") occurred in 2007. (Compl., Ex. E).

Many of JLI's assertions are based on purported contractual obligations on the part of the City that simply do not exist. For example, for more than ten years the City has had no obligation to provide parking for the Landing. Rather, JLI has declined to construct its own parking garage for Landing patrons even though the City is obligated to pay JLI millions of dollars if it ever did. Further, JLI misstates the City's obligation to require security and police protection and has utterly no basis to insist that the City pay for JLI's redevelopment of the Landing. Consistent with its disregard of the provisions of the Lease Agreement and evidencing that it is not actually concerned with asserting meritorious causes of action, JLI did not provide

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[4] When JLI is permitted to replead, it should be directed to confine its allegations to those having legal significance and refrain from making incorrect assertions that the relationship between the parties is anything other than that of a landlord and tenant.

[5] Section 19.1 reads:

> No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Lease is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture or of a joint ownership between the City and [JLI], or as a lending of the City's taxing power or credit to [JLI], or as constituting [JLI] as the agent or representative of the City for any purpose or in any manner whatsoever.

the required notice to the City of purported breaches or afford the City an opportunity to cure before it filed suit. These and other assertions negated by the Lease Agreement render the Complaint subject to dismissal.

A. The City Has No Obligation to Provide Parking for the Landing

JLI's allegation that the City breached the Lease Agreement by failing to provide adequate parking for the Landing is directly contradicted by the Sixth Amendment and related contracts. The Sixth Amendment and some of its related agreements are attached to the Complaint as Exhibit E. However, JLI neglected to attach certain other crucial agreements that were also part of the Sixth Amendment and which conclusively establish the falsity of its contentions concerning the City's purported obligation to provide parking. The missing Sixth Amendment exhibits include: (i) the Parking Obligation Termination and Mutual Limited Release Agreement ("Termination and Release Agreement"), which is Exhibit C to the Sixth Amendment; (ii) the Second Amendment to Redevelopment Agreement ("Redevelopment Agreement"), which is Exhibit E to Exhibit E to the Sixth Amendment; and (iii) the First Amendment to Parking Rights Agreement ("Parking Rights Agreement"), which is Exhibit F to Exhibit E to the Sixth Amendment. Each of these omitted agreements was executed contemporaneously with the Sixth Amendment on February 8, 2007, and the City has attached them to this motion as **Exhibits "B," "C," and "D,"** respectively. These contracts are foundational to JLI's allegations that the City breached its parking obligations and it is therefore proper for the Court to consider them when ruling on this motion to dismiss. Striton Props., 533 So. 2d at1179 (holding trial court properly ordered plaintiff to file agreement critical to plaintiff's claims and correctly considered the agreement in ruling on a motion to dismiss); Fla. R. Civ. P. 1.130(a).

The missing agreements show that the City has no outstanding parking obligations to JLI and has not for nearly 11 years. Section 1.2.2 of the Sixth Amendment, states in pertinent part: "The City and JLI are entering into this Sixth Amendment for the **purpose of . . . terminating the City's obligations under the Lease to provide parking for the Landing** except as set forth in this Sixth Amendment and in the Amended Garage Development Agreement and Amended Parking Rights Agreement." (emphasis added). The Termination and Release Agreement further provides in section 3:

> **All City obligations to provide any type of parking or financial or other assistance related to parking with respect to the Landing** as contained in the (i) Lease including without limitation the Fifth Amendment, (ii) Garage Development Agreement and (iii) Parking Rights Agreement **are hereby terminated and released except as set forth in the Sixth Amendment to the Lease, the Amended Parking Rights Agreement and Amended Garage Development Agreement** (the "Continuing Parking Obligations"). From and after the date hereof and except for the Continuing Parking Obligations, **the City shall have no obligation to provide any parking for the Landing or JLI**, or any financial assistance related to parking for the Landing or JLI.

(emphasis added). As of February 8, 2007, the City's "Continuing Parking Obligations" were to pay to Project RiverWatch, LLC (referred to as "Kuhn") upon its opening a new parking garage on the southwest corner of Hogan and Bay Streets: (1) a "Parking Grant" of up to $3,000,000; (2) "Validation Payments" of $500,000 for the first five years of a parking validation program benefitting Landing patrons and $131,250 each year thereafter until 2031; and (3) a "Utilities Payment" of up to $500,000 if Kuhn incurred expenses to move utilities during construction. Significantly, JLI and the City further agreed that if Kuhn failed to construct its parking garage within the specified time period, JLI's "sole remedy against the City with respect to the City's outstanding [parking] obligations" (Sixth Amend. § 10.2.1) is limited to JLI's exercise of its

option to build its own parking garage and receive, upon its completion, the Garage Grant, Validation Payments, and the Utilities Payment.[6]

The City's obligation to make these payments to JLI, however, is expressly contingent upon and payable only when JLI has completed construction of its own parking garage.[7] JLI has not, and cannot, allege that it has constructed its own parking garage. Therefore, the City has no outstanding parking obligations with respect to the Landing. Further, JLI's allegation that "the City refused to transfer the $3.5 Million Contribution to JLI as it was required to do under the express terms of the Sixth Amendment" is patently false. (Compl. ¶ 30). Accordingly, the Complaint should be dismissed to the extent it is founded on these contradicted assertions. E.g., Striton Props., 533 So. 2d at 1179 ("[I]f an attached document negates a pleader's cause of action, the plain language of the document will control and may be the basis for a motion to dismiss.").

B. JLI Misstates the City's Obligations Concerning Security and Police

JLI alleges that the City breached the Lease Agreement by failing to provide "enough security and police protection to prevent incidents of crime outside of the West Parcel." (Compl. ¶ 75).[8] This allegation misstates the City's obligations under the Lease Agreement with respect to security. The Lease Agreement does not guarantee that the City can prevent incidents of

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[6] Sixth Amend. §§ 1.2.2, 1.5, 2.28, 3.2.2 & 3.2.3; Termination and Release Agreement §§ 3 & 4.2; Redevelopment Agreement §§ 2.20 & 2.26; & Parking Rights Agreement ¶ (t).

[7] See, e.g., Sixth Amend. § 3.2.2 ("[T]he City will instead pay to JLI the Garage Grant, and begin paying the Validation Payments to JLI under the terms of the Amended Parking Rights Agreement (as if JLI were substituted for Kuhn under such agreement), **upon the opening to the public of a new parking garage constructed by JLI**." (emphasis added)); § 3.2.3 ("**Upon the opening of the JLI Garage to the public**, the City will pay to JLI the Garage Grant and Utilities Payment, and begin paying the Validation Payments . . . ." (emphasis added)); Redevelopment Agreement § 2.20 (same).

[8] The Complaint uses various descriptions of the area where it claims the City is contractually obligated to provide security, referring to areas "outside the Lease Property of the Landing," "areas adjacent to the West Parcel," "areas immediately adjacent to the Landing," areas "outside the West Parcel," or "the Landing's exterior common areas." (Compl. ¶¶ 36, 37, 75, 85.B., & 100). In fact, the Lease Agreement only requires the City provide security on the West Parcel and Exterior Common Areas, as defined in the agreement.

crime around the Landing. Nor does it require the City to favor the Landing with any better treatment than the City's other public spaces.[9] The Lease Agreement states that "the City will provide the normal security and police protection afforded all other City public open spaces with appropriate augmentation during periods of high pedestrian activity . . . ." (Lease Agreement § 2.9). JLI has not alleged that the City has failed to satisfy this requirement.

C. Allegations the City Has "Reduced" the Amount it Spends Promoting the Landing Do Not State a Cause of action

The Lease Agreement requires the City to fund programs that support and promote the Landing in an amount equal to JLI's annual base rent.[10] (Compl. ¶ 49). The Complaint does not allege that the City has failed to perform this obligation. Instead, JLI merely alleges "the City has over time reduced its support of such programs and events that promote the Landing" and complains that has had to devote its own time and resources into promoting its business. (Id. ¶ 50). These allegations are insufficient to allege a breach of the Lease Agreement.

D. The Allegation that a "Well-Known Local Chocolatier" was Offered Incentives Is Not a Basis for Breach

JLI alleges the Chairman of the JEDC failed to provide incentives of public money to a "well-known local chocolatier" to move its factory to the Landing, but instead offered incentives for the chocolatier to move its factory to the LaVilla district. (Compl. ¶¶ 55–59).[11] JLI has not, and cannot, point to a provision of the Lease Agreement which requires the City to provide incentives for tenants to come to the Landing over other areas of the City. Furthermore, the Chairman of the JEDC could not legally offer economic incentives on behalf of the City without

[9] Nonetheless, the fact is that the Landing and surrounding areas receive substantial attention from the Jacksonville Sheriff's Office and has received more than $750,000 worth of police services since January 1, 2013 for special events alone, at no cost to JLI.

[10] The annual base rent for this prime piece of downtown real estate is approximately $100,000 per year. JLI has never paid the City any additional rent.

[11] JEDC was dissolved more than five (5) years before the Complaint was filed; therefore, even if JLI could base a claim on these assertions, the claim would be barred by the applicable statute of limitations.

action by the JEDC board as a whole and ratification by City Council. See Jacksonville Ord. Code § 500.104 (2012).

E. Allegations the City Refused to Fund JLI's Redevelopment of the Landing Fail to State a Cause of Action

JLI claims that the City has acted in "bad faith" because it did not agree to JLI's demands to redevelop the Landing. There is no cause of action against the City for breach of the Lease Agreement for refusing to agree to JLI's plans to redevelop the Landing because JLI has not alleged, and cannot allege, breach of any provision of the Lease Agreement obligating the City to do so.[12] Brighton Dev. Corp. v. Barnett Bank of S. Fla., N.A., 513 So. 2d 1103, 1104 (Fla. 2d DCA 1987) (rejecting bad faith claim where party was under no contractual obligation). Moreover, there is no cause of action for "bad faith" in the abstract. E.g., QBE Ins. Corp. v. Chalfonte Condo. Apartment Ass'n, Inc., 94 So. 3d 541, 548 (Fla. 2012). JLI's promissory estoppel cause of action which is also founded on these allegations is addressed below.

III. EACH COUNT OF THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION

As stated above, the Complaint must be dismissed because it is based on certain allegations that are negated by the agreements between the parties. Additionally, as set forth below, each count of the Complaint is subject to dismissal for failure to state a cause of action.

A. Count I For Declaratory Judgment Fails to State a Cause of Action

Count I for declaratory judgment must be dismissed because JLI has not alleged that it is "in doubt as to some right or status and that [it] is entitled to have such doubt removed." Abruzzo v. Haller, 603 So. 2d 1338, 1339 (Fla. 1st DCA 1992) ("A declaratory judgment is not available to settle factual issues bearing on liability under a contract which is clear and

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[12] The Complaint contains allegations concerning a 2006 proposal by JLI to redevelop the Landing that was vetoed by Mayor Peyton. (Compl. ¶ 61). Although not actionable in any event, these allegations could not form the basis of a claim because they occurred outside of the applicable statute of limitations.

unambiguous and which presents no need for its construction." (quotation omitted)). See also Hialeah Race Course, Inc. v. Gulfstream Park Racing Ass'n, 210 So. 2d 750, 752 (Fla. 4th DCA 1968) (holding party seeking declaratory judgment must assert it "is in doubt or is uncertain as to the existence or non-existence of some right, status, immunity, power or privilege and has an actual, practical and present need for a declaration"). JLI has cited no provision of the Lease Agreement that it believes is ambiguous and needs construction. Instead, JLI has unequivocally alleged that the City breached the Lease Agreement. (See Compl. ¶¶ 73–78). Thus, the dispute is whether the City has breached the Lease Agreement, not whether the Lease Agreement is in need of interpretation. Abruzzo, 603 So. 2d at 1339 (affirming dismissal of declaratory action that merely sought to adjudicate facts underlying alleged breach of contract).

Moreover, the declaratory relief requested cannot be given. JLI is not entitled to a declaration that the City "must provide adequate parking for the Landing and its patrons," as such a declaration would be plainly contradicted by the terms of JLI's agreements with the City. Nor is JLI entitled to a declaration that the City "must provide adequate security and/or police protection for the Landing's exterior common areas," as that is not what is required under the Lease Agreement. Further, a judicial decree that the City "must regularly maintain and timely repair the Landing's exterior common areas" and "must refrain from interfering with JLI's right to occupy, use and quietly enjoy the West Parcel" is meaningless because, in the abstract, there is no dispute that the City must do these things.

B. Count II for Specific Performance Fails to State a Cause of Action

Count II seeks an order of specific performance requiring the City to "provide adequate parking for the Landing and its patrons"; "provide adequate security or police protection for the Landing's exterior common areas"; "regularly maintain and timely repair the Landing's exterior

common areas"; and "refrain from interfering with JLI's right to occupy, use and enjoy the West Parcel." (Compl. ¶¶ 82–88). The Court cannot order specific performance requiring the City to provide "adequate parking" because, as discussed above, the City has no obligation to do so under the Lease Agreement. The same is true with respect to the request for "adequate security or police protection," as the City did not contract to do that. Moreover, the relief requested is entirely inappropriate, as it would require the Court to oversee the next 39 years of the parties' relationship and would transform any future breach into a violation of the Court's order. Craven v. TRG-Boynton Beach, Ltd., 925 So. 2d 476, 481 (Fla. 4th DCA 2006) ("Generally, Florida, like the vast majority of other jurisdictions, does not permit specific performance of a lease, even in ordinary circumstances, because the court would be forced to undertake an excessive supervisory responsibility.").[13] Additionally, specific performance is not appropriate where the plaintiff has an adequate remedy at law, such as a breach of contract action. Linkous v. Linkous, 941 So. 2d 530, 530 (Fla. 1st DCA 2006).

C. Count III for Breach of the Covenant of Quiet Enjoyment Fails to State a Cause of Action

In Count III, JLI alleges that the City violated the covenant of quiet enjoyment by: (1) impairing access to the East entrance of the Landing during nearby road construction; and (2) failing to timely repair the docks and bulkheads bordering the Landing following damage from two hurricanes. (Compl. ¶¶ 39, 46, & 92). The deficiencies in the first allegation are addressed in Section IV below. The insufficiency of the second allegation is addressed in this section.

[13] See also Cardinal Inv. Group, Inc. v. Giles, 813 So. 2d 262, 263 (Fla. 4th DCA 2002) ("[A]n injunction requiring specific performance of a lease is not available in Florida or the vast majority of other jurisdictions. The rationale of these cases is that such an injunction would require the court to supervise the future performance of the lease." (citation omitted)); Mayor's Jewelers v. Cal. Pub. Employees Ret. Sys., 675 So. 2d 904, 904–05 (Fla. 4th DCA 1996).

Section 18.1 of the Lease Agreement defines "quiet enjoyment" and provides that JLI "shall lawfully and quietly hold, occupy and enjoy the Leased Property without hindrance or molestation by the City during the term of this Lease or by any person or persons claiming under the City." Although the acts of the landlord need not rise to the level of constructive eviction, they must cause substantial injury to the tenant to violate the covenant of quiet enjoyment. See Coral Wood Page, Inc. v. GRE Coral Wood, LP, 71 So. 3d 251, 253 (Fla. 2d DCA 2011); Carner v. Shapiro, 106 So. 2d 87, 89 (Fla. 2d DCA 1958) ("If a landlord authorizes acts to be done which cause **substantial injury** to the tenant in the peaceful enjoyment of the demised premises and such a result is the natural and probable consequence of the acts so authorized, the landlord is liable therefor." (quotation omitted) (emphasis added)). In those cases in which a claim for breach of quiet enjoyment has been stated, the tenants have asserted that the landlord (or its agent) took affirmative action that directly impacted the tenant's use of the leased space. See Coral Wood Page, 71 So. 3d at 253 (reversing summary judgment for landlord where tenant asserted affirmative defense that landlord's security officers had continuously harassed customers entering and exiting the leased premises); Carner, 106 So. 2d at 88 (affirming judgment against landlord where remodeling directly above tenant's space caused loss of use of the premises and damage to ceiling and plate glass where the interference amounted to an almost complete destruction of plaintiff's right to do business while the alterations were being performed).

JLI alleges that the City has not repaired portions of the boat docks on the river-side part of the Landing after they suffered hurricane damage. (Compl. ¶ 39). JLI merely claims it has been damaged by "reducing the Landing's curb appeal" and "costing the Landing potential business from those patrons that choose to travel and visit by water." Id. These allegations do

not rise to the level of showing that the City took any acts which caused "substantial injury" to JLI. Carner, 106 So. 2d at 89. At best, JLI has alleged that two natural disasters caused potential inconvenience to patrons arriving by boat. Unlike the tenants in Coral Wood Page and Carner, JLI does not, and cannot, allege that this potential inconvenience rises to the level of an almost complete destruction of JLI's ability to do business on the leased premises. The allegations of Count III are therefore insufficient as a matter of law.

D. Count IV for Breach of Lease Agreement Fails to State a Cause of Action

Count IV for breach of contract is predicated on a number of purported failures on the part of the City to perform its obligations under the Lease Agreement. The City's alleged non-performance, however, does not yet constitute a breach of the Lease Agreement, and may never. Under the Lease Agreement, JLI has no remedy against the City unless an "Event of the City's Default" has occurred. (Lease Agreement, § 11.4). The City's failure to perform one of its contractual obligations is not an "Event of the City's Default" unless its non-performance continues for thirty days after written notice from JLI (or, if the non-performance cannot be cured in thirty days, the City fails to commence and diligently prosecute actions to cure non-performance). (Lease Agreement, § 11.3).[14] In other words, the failure to cure or take steps to cure after receiving notice constitutes the breach and such facts must be alleged as elements of a cause of action for breach. See Hunt v. Hiland, 366 So. 2d 42, 44 (Fla. 4th DCA 1978) (holding

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[14] Section 11.3 of the Lease Agreement provides:

> The failure of the City to perform any of the covenants, conditions and agreements of this Lease which are to be performed by the City **and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from [JLI] to the City** (which notice shall specify the respects in which [JLI] contends that the City has failed to perform any of such covenants, conditions and agreements), unless such default be one which cannot be cured within thirty (30) days and the City within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such default, shall constitute an "Event of the City's Default."

(Lease Agreement, § 11.3 (emphasis added)).

lessors' election of remedies was premature where the lessee's alleged default had not ripened into a contractually defined "event of default" due to lessor's failure to first provide written notice of default). JLI has not alleged that it gave the City the required notice and that the City's non-compliance has continued for thirty days thereafter. This defect renders Counts I through IV subject to dismissal.

E. Count V for Promissory Estoppel Fails to State a Cause of Action

Count V purports to be a cause of action for promissory estoppel based on allegations that the City made "numerous representations regarding its readiness, willingness and ability to assist and cooperate with JLI in redeveloping the Landing," that JLI expended resources to study and make plans concerning redevelopment, avoided entering into long-term leases or renewing other leases with existing tenants, and held off on making certain repairs and maintenance to the Landing "believing redevelopment was on the immediate horizon." (Compl. ¶¶ 105 & 106). Promissory estoppel only applies when there is "(1) a promise which the promissory should reasonably expect to induce action or forbearance, (2) action or forbearance in reliance on the promise, and (3) injustice resulting if the promise is not enforced." DK Arena, Inc. v. EB Acquisitions I, LLC, 112 So. 3d 85, 96 (Fla. 2013).

First, Count V must be dismissed because sovereign immunity bars promissory estoppel claims against the City. The City may only be liable for breach of an express, written agreement. It cannot be held liable on implied contract theories, such as promissory estoppel. County of Brevard v. Miorelli Eng'g, Inc., 703 So. 2d 1049, 1051 (Fla. 1997) ("We decline to hold that the doctrines of waiver and estoppel can be used to defeat the express terms of the contract. Otherwise, the requirement . . . that there first be an express written contract before there can be a waiver of sovereign immunity would be an empty one."); City of Ft. Lauderdale v. Israel, 178

So. 3d 444, 447–48 (Fla. 4th DCA 2015) (holding sovereign immunity barred implied contract claim against municipality); Brevard County v. Morehead, 181 So. 3d 1229, 1232–33 (Fla. 5th DCA 2015) (same). Moreover, the Lease Agreement is an express written contract between the parties that governs their relationship with respect to the Landing property. It cannot be altered by the assertion of promissory estoppel. Advanced Mktg. Sys. Corp. v. ZK Yacht Sales, 830 So. 2d 924, 928 (Fla. 4th DCA 2002) ("Promissory estoppel is not a doctrine designed to give a party to a negotiated commercial bargain a second bite at the apple in the event it fails to prove breach of contract." (citation omitted)).

Second, promissory estoppel is not available unless the plaintiff can show that the terms of the purported agreement were sufficiently definite. W.R. Grace & Co. v. Geodata Servs., Inc., 547 So. 2d 919, 925 (Fla. 1989); Bergman v. Delulio, 826 So. 2d 500, 504 (Fla. 4th DCA 2002). JLI has not alleged what terms were promised with respect to redevelopment. At best, JLI has only alleged that the City represented it was willing to entertain the possibility of entering into a redevelopment agreement. The Court cannot enforce an unwritten and indefinite "promise" by the City to consider whether to enter into a contract. A promise to agree in the future is not enforceable. E.g., ABC Liquors, Inc. v. Centimark Corp., 967 So. 2d 1053, 1056 (Fla. 5th DCA 2007) ("[A]n 'agreement to agree' is unenforceable as a matter of law.").

Third, promissory estoppel is unavailable where the plaintiff did not reasonably rely on assertions of the defendant. JLI is charged with the knowledge that the City cannot be bound to approve redevelopment plans or expend City funds without a properly enacted ordinance. Harris v. Sch. Bd. of Duval County, 921 So. 2d 725, 735 (Fla. 1st DCA 2006). Moreover, by JLI's own account, it had gone through a number of failed attempts utilizing various plans to reach a redevelopment agreement with the City. (Compl. ¶¶ 61–69). Taking its own allegations as true,

JLI could not have reasonably relied on any alleged promise by any City employee, officer, or official, to enter into a redevelopment agreement.

Finally, promissory estoppel cannot be used to avoid the statue of frauds. DK Arena, 112 So. 3d at 96 (promissory estoppel cannot avoid the statute of frauds). An agreement to redevelopment the Landing would require a written amendment to the Lease Agreement to satisfy the statute of frauds, as the Lease Agreement has a term longer than one year. Fla. Stat. § 725.01. No such written agreement exists, nor has it been alleged. The four corners of the Lease Agreement, and the provisions therein, entirely govern the landlord and tenant relationship between the parties.

IV. JLI SHOULD PROVIDE A MORE DEFINITE STATEMENT

To the extent any portion of the Complaint survives this motion to dismiss, JLI should be required to submit a more definite statement, one that comports with Florida pleading standards. The Complaint is a shotgun pleading. Each count incorporates the first 71 paragraphs of the Complaint. However, the specific allegations within the counts themselves mention only some, not all, of the assertions made in the first 71 paragraphs. For example, paragraphs 14 through 16, 49, 50, and 55 through 59 are incorporated into each count, yet no count expressly mentions the allegations in those paragraphs. Moreover, Count V for promissory estoppel incorporates paragraphs 1 through 71, yet appears to be based on only paragraphs 60 through 71. As a result, it is not clear what allegations actually form the basis of each count. The purpose of a pleading is to frame the issues between the parties so that they can “know what they’ve got to meet and get ready to meet it.” Nguyen v. Roth Realty, Inc., 550 So. 2d 490, 491 (Fla. 5th DCA 1989). The Complaint fails to fulfill that purpose.

Further, a number of the allegations do not appear to relate to any of JLI's claims, but instead simply provide unnecessary commentary. For example, JLI alleges that the City's position in the related case concerning the JLI's refusal to take title to the East Parcel is somehow inconsistent with the City having sent JLI a notice that it was in default of the Lease Agreement (despite the fact that in both instances involve the City requiring JLI to fulfill its contractual obligations).[15] (Compl. ¶¶ 15 & 16; City of Jacksonville v. Jacksonville Landing Investments, LLC, 2015-CA-6340, Div. CV-C (Fla. 4th Jud. Cir.)). JLI has not alleged how these allegations amount to a cause of action, yet they are incorporated into every count in the Complaint. These extraneous assertions should be omitted from any subsequent pleading.

Additionally, JLI vaguely alleges that "during several years of the Florida/Georgia Weekend Celebrations, the City shutdown the Celebration at the Landing in the middle of the festivities citing baseless alleged municipal code violations." (Compl. ¶ 53). JLI is required to allege, at a minimum, when it claims these alleged wrongful "shutdowns" occurred, so that the City can frame its defenses. The City is entitled to know at least what years JLI claims it wrongfully disrupted the Florida/Georgia activities at the Landing. Thus, JLI should be required to provide a more definite statement in this regard. See Fla. R. Civ. P. 1.140(e).

Similarly, JLI alleges the City "impaired access through the east entrance to the Landing during construction of the Laura Street roundabout and improvements." (Compl. ¶ 46).

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[15] JLI has steadfastly failed and refused to take title to the East Parcel under the terms it agreed to, while keeping millions of dollars in revenue generated over the ten years it has operated the East Parcel parking lot, all without paying any property taxes. Although JLI, which was then owned by Toney Sleiman and Peter Sleiman, exercised its option to purchase the East Parcel, Toney Sleiman insisted that title pass to an entity Toney owned with his other brother, Eli Sleiman, to the exclusion of Peter Sleiman. Peter Sleiman's attorney threatened to sue the City if it transferred title. Thereafter, the City's repeated attempts to get JLI to complete the transaction went nowhere due to the drawn-out and highly acrimonious litigation between the Sleiman brothers. When the Sleiman litigation finally subsided, JLI refused to complete the transaction unless the City agreed to give it $3.5 million so that JLI and another entity could purchase an existing surface parking lot. When Mayor Peyton vetoed the legislation (which, contrary to JLI's allegation, was not simply "implementing legislation"), JLI continued to fail to take title to the East Parcel despite representing that it intended to formally complete the transaction.

However, JLI fails to describe with any specificity the nature or extent of the alleged impairment. Additionally, despite being able to state that the impairment existed for over 400 days, JLI fails to identify the time period during which these alleged conditions existed. As the Laura Street roundabout was completed in 2011, the reason for this omission appears obvious—even if JLI had a claim based on these allegations, it would be barred by the applicable five year statute of limitations. Fla. Stat. § 95.11(2)(b). JLI should be required to withdraw these allegations, or provide a more definite statement.

V. CONCLUSION

In conclusion, the Complaint should be dismissed for failure to state a cause of action or JLI should be required to provide a more definite statement concerning certain of its allegations.

OFFICE OF GENERAL COUNSEL

/s/Christopher M. Garrett
Christopher M. Garrett
Assistant General Counsel
Fla. Bar No. 0798541
Tiffiny Douglas Safi
Assistant General Counsel
Fla. Bar No. 682101
Jacob J. Payne
Assistant General Counsel
Fla. Bar No. 0639451
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Jacksonville, Florida 32202
Phone: (904) 630-1700
Fax: (904) 630-1316
garrettc@coj.net
tsafi@coj.net
jpayne@coj.net

Counsel for Defendant, City of Jacksonville

Certificate of Service

I HEREBY CERTIFY that on this 15th day of December, 2017, a true and correct copy of the foregoing was filed with the Clerk of Court via the Florida Courts e-Filing Portal, which will send notice of electronic filing to:

Rutledge R. Liles, Esq.
rliles@lilesgavin.com
Michael L. Lee, Esq.
mlee@lilesgavin.com
LILES GAVIN, P.A.
301 W. Bay Street, Suite 1030
Jacksonville, FL 32202

/s/Christopher M. Garrett
Attorney

EXHIBIT "A"

OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE

JASON R. GABRIEL*
GENERAL COUNSEL

ASHLEY B. BENSON
JODY L. BROOKS
WENDY E. BYNDLOSS
KAREN M. CHASTAIN
DERREL Q. CHATMON
JEFFERY C. CLOSE
JULIA B. DAVIS
STEPHEN M. DURDEN
CRAIG D. FEISER
GILBERT L. FELTEL, JR.
SONDRA R. FETNER
LOREE L. FRENCH
CHRISTOPHER GARRETT
SEAN B. GRANAT
SUSAN C. GRANDIN
KATY A. HARRIS
LAWSIKIA J. HODGES
SONYA HARRELL HOENER
PAIGE HOBBS JOHNSTON
EMERSON M. LOTZIA

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117 WEST DUVAL STREET, SUITE 480
JACKSONVILLE, FLORIDA 32202

RITA M. MAIRS
JAMES R. MCCAIN JR.
WENDY L. MUMMAW
KELLY H. PAPA
TRACEY KORT PARDE
JACOB J. PAYNE
GAYLE PETRIE
JON R. PHILLIPS
CHERRY SHAW POLLOCK
STEPHEN J. POWELL
TIFFINY DOUGLAS SAFI
R. ANTHONY SALEM
JOHN C. SAWYER, JR.
MARGARET M. SIDMAN
SANDRA P. STOCKWELL
JASON R. TEAL
ADINA TEODORESCU
MICHAEL B. WEDNER
STANLEY M. WESTON
GABY YOUNG

*BOARD CERTIFIED CITY, COUNTY AND LOCAL GOVERNMENT LAW

October 17, 2017

VIA HAND DELIVERY
Jacksonville Landing Investments, LLC
c/o Sleiman Enterprises
1 Sleiman Parkway, Suite 270
Jacksonville, Florida 32216
Attention: Anthony T. Sleiman, President

Re: NOTICE OF BREACH OF LEASE AGREEMENT

Dear Mr. Sleiman:

Jacksonville Landing Investments, LLC ("JLI") is hereby notified that it is in breach of the Disposition, Development and Lease Agreement dated October 3, 1985, as amended (the "Lease Agreement"), for failing to operate and maintain The Jacksonville Landing as "a high-quality, first class retail facility" as required by the Lease Agreement.

The City entered into the Lease Agreement with Rouse-Jacksonville, Inc. ("Rouse") in 1985 for the express purpose of developing and maintaining The Jacksonville Landing as a first-class retail facility in the heart of downtown. At the time, Rouse was the premier national developer of specialty retail space and had developed a number of very successful and high-quality shopping centers, including other festival marketplace properties like those referenced in Section 7.2 of the Lease Agreement: 1) The Gallery at Market Street East (Philadelphia); 2) Harborplace (Baltimore); 3) Fanueil Hall Marketplace (Boston); 4) Santa Monica Place (Santa Monica); The Grand Avenue (Milwaukee); and 5) South Street Seaport (New York City).

Office Telephone	Writer's Direct Line	Facsimile	Writer's E-Mail Address	Office Web Site
(904) 630-1700	(904) 630-7092	(904) 630-1316	GarrettC@coj.net	GeneralCounsel.coj.com

Several material covenants were included in Article VII of the Lease Agreement to ensure that The Jacksonville Landing would be operated and maintained "in a manner that is attractive both in its physical characteristics and in its appeal to customers and trade." JLI, as assignee of Rouse since 2003, is bound by those covenants.

The Jacksonville Landing is not currently being operated and maintained as required by the Lease Agreement. The occupancy rate of The Jacksonville Landing is far below industry averages, and the spaces that are leased do not house enough high-quality merchants providing a broad range of merchandise and services consistent with other first-class festival marketplace-style properties. A large percentage of spaces are vacant. Many of the spaces that appear to be occupied are closed during normal business hours. There is peeling paint, plywood covering doors in the public areas, vacant spaces secured with chains and padlocks, leasable areas visibly being used as storage space, unpleasant smells, dirt and grime, open demolition, and an overall unattractive environment. Not only are they poorly maintained, but The Jacksonville Landing's improvements are antiquated. JLI has failed to modernize The Jacksonville Landing's 30-year-old buildings in any appreciable way so as to remain competitive and attract customers and tenants.

Accordingly, JLI has breached the materials terms of the Lease Agreement by failing to do the following:

1. Prudently and continuously manage and operate The Jacksonville Landing as a "first-class retail facility having a broad range of merchandise and services consistent with the size and location" of its improvements, as required by Section 7.2 of the Lease Agreement;

2. Operate The Jacksonville Landing "at or above the prevailing level of quality of the urban retail centers known as The Gallery at Market Street East in Philadelphia, Pennsylvania; Harborplace, in Baltimore, Maryland; Fanueil Hall Marketplace, in Boston, Massachusetts; Santa Monica Place, in Santa Monica, California; The Grand Avenue, Milwaukee, Wisconsin; and South Street Seaport in New York City, New York," as required by Section 7.2, clause (ii) of the Lease Agreement;

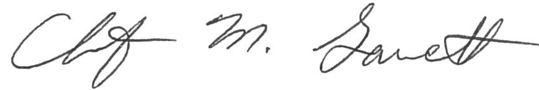
3. Use "all reasonable efforts" to lease space at The Jacksonville Landing to subtenants "who will provide a balanced mix of goods and services consistent with the standards" set forth in the Lease Agreement, as required by Section 7.2, clause (a) of the Lease Agreement;

4. Properly maintain The Jacksonville Landing's improvements and keep them in good repair, as required by Section 7.2, clause (c) of the Lease Agreement; and

5. Operate The Jacksonville Landing "in a high-quality, first-class manner which [is] attractive in both its physical characteristics and in its appeal to customers and trade," as required by Section 7.4, clause (a) of the Lease Agreement.

Pursuant to Section 11.1, if JLI fails within thirty (30) days of this notice to cure its breach, or commence and diligently prosecute all actions necessary to cure such breach, it will constitute an Event of Default under the Lease Agreement. The City will then take action to terminate the Lease Agreement and remove JLI from the property.

Sincerely,



Christopher M. Garrett

cc:

Rutledge R. Liles, Esq.
Michael D. Lee, Esq.
Liles Gavin, P.A.
301 W. Bay Street, Suite 1030
Jacksonville, Florida 32202
(Via Certified Mail – Return Receipt Requested)

9171 9690 0935 0160 5152 36

Robert A. Heekin, Esq.
The Law Offices of Robert A. Heekin
1 Sleiman Parkway, Suite 270
Jacksonville, Florida 32216
(Via Certified Mail – Return Receipt Requested)

9171 9690 0935 0160 5152 43

Mitchell W. Legler, Esq.
Kirschner & Legler, P.A.
1431 Riverplace Blvd., Suite 910
The Peninsula Building
Jacksonville, Florida 32207
(Via Certified Mail – Return Receipt Requested)

9171 9690 0935 0160 5152 50

PNC BANK, N.A.
205 Datura Street
West Palm Beach, Florida 33401
(Via Certified Mail – Return Receipt Requested)

9171 9690 0935 0160 5152 67

EXHIBIT "B"

PARKING OBLIGATION TERMINATION AND MUTUAL LIMITED RELEASE AGREEMENT

This PARKING OBLIGATION TERMINATION AND MUTUAL LIMITED RELEASE AGREEMENT (this "Agreement") is made as of the 8th day of February, 2007 (the "Effective Date"), between the **CITY OF JACKSONVILLE**, a municipal corporation and political subdivision of the State of Florida ("City"), **JACKSONVILLE ECONOMIC DEVELOPMENT COMMISSION** ("JEDC"), and **JACKSONVILLE LANDING INVESTMENTS, LLC**, a Florida limited liability company ("JLI").

PRELIMINARY STATEMENTS

A. The City is the owner of the land, exterior common area improvements, parking areas and reversionary interest in the buildings of that certain commercial retail establishment currently known as the "Jacksonville Landing" (hereinafter the "Landing"), located in downtown Jacksonville. The City leases the land underlying the Landing buildings to JLI for its operation of the Landing retail facility, pursuant to the terms and conditions of the Disposition, Development and Lease Agreement dated October 3, 1985, as previously amended five times and as more particularly described in **Exhibit A** (the "Lease"). The City entered into the Lease with JLI's predecessor Rouse-Jacksonville, Inc. ("Rouse") pursuant to solicited requests for proposal to develop and lease the Landing property, and Rouse later assigned its interests in the Lease to JLI in August 2003. Pursuant to the terms of the Lease, the JLI owns and maintains the Landing buildings during the term of the Lease, and such ownership reverts to the City at the end of the Lease term.

B. The City has certain obligations under the Lease to provide parking for the Landing, and pursuant to the Fifth Amendment to the Lease dated June 25, 2001 (the "Fifth Amendment"), the City and Rouse agreed that the City could discharge those parking obligations by entering into a third-party agreement with Humana Medical Plan, Inc. ("Humana") dated June 6, 2001 (the "Garage Development Agreement") for Humana to develop a parking garage on Humana's vacant property located at the southeast corner of Bay and Hogan Streets (the "Parking Garage") and reserve 300 daily and 375 night and weekend short term parking spaces for public use including use by Landing patrons (the "Public Parking Spaces"), all as more specifically set forth in the Garage Development Agreement. The Garage Development Agreement also included a parking validation program to be funded in part by the City to provide parking discounts or free parking for Landing patrons at the Parking Garage (the "Parking Validation").

C. The terms of the Parking Validation and reservation of the Public Parking Spaces are also set forth in the Parking Rights Agreement (the "Parking Rights Agreement") dated June 4, 2001 between the City, Rouse and Humana. In the Garage Development Agreement and Parking Rights Agreement, the City agreed to contribute up to $3,000,000 to Humana upon the opening of the Parking Garage for the reservation of the Public Parking Spaces, and also agreed to pay Humana $500,000 upon such garage opening for the Parking Validation for the first five years. The City further agreed to pay up to $131,250 per year beginning in year 6 and continuing until 2031 for the continuation of the Parking Validation.

D. Humana did not build the Parking Garage and later contracted to sell the Parking Garage site to a third party, which assigned its interests to Project RiverWatch, LLC, a Florida limited liability company owned or controlled by Cameron Kuhn (such company being hereafter referred to as "Kuhn"). Kuhn plans to develop a mixed-use development on the site that will include a parking garage large enough to accommodate the Public Parking Spaces. Kuhn has agreed to accept all of Humana's obligations under the Garage Development Agreement and the Parking Rights Agreement.

E. The City and Kuhn are simultaneously herewith entering into the Amended Garage Development Agreement (the "Amended Garage Development Agreement") and Amended Parking Rights Agreement (the "Amended Parking Rights Agreement") for purposes of (i) extending the Parking Garage construction deadline set forth in the original Garage Development Agreement, (ii) providing for certain modifications to the Parking Garage design and specifications, and (iii) making certain other changes to the Garage Development Agreement and Parking Rights Agreement.

F. The City, JEDC and JLI are simultaneously herewith entering into the Sixth Amendment to Disposition, Development and Lease Agreement (the "Sixth Amendment"), pursuant to which, among other things, the City is agreeing to convey the Property, as defined in the Sixth Amendment, to JLI, and the parties are agreeing to (i) release Humana from its obligations under the Parking Rights Agreement and Garage Development Agreement; (ii) accept Kuhn's assumption of Humana's obligations under the Parking Rights Agreement and Garage Development Agreement, as amended by the Amended Garage Development Agreement; and (iii) enter into this Agreement and certain other documents described in the Sixth Amendment. (The Sixth Amendment, Amended Garage Development Agreement, Amended Parking Rights Agreement, Release and Consent to Assignment and Assumption Agreement of even date herewith between the parties hereto and Humana, the utility easements described in the Sixth Amendment, and all other documents executed in connection with the Closing described in the Sixth Amendment are hereafter referred to as the "Project Documents").

G. This Agreement terminates the City's obligation to provide parking for the Landing except as set forth in the Sixth Amendment, Amended Garage Development Agreement and Amended Parking Rights Agreement, and contains mutual limited releases pursuant to which the parties mutually release each other from all of their respective obligations, costs, damages and liabilities under and related to the Lease (other than the obligations under the Sixth Amendment) up to and including the date of this Agreement, but not including the parties' respective obligations accruing after such date under the Lease or the Project Documents.

NOW THEREFORE, in consideration of the mutual promises and releases contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. PRELIMINARY STATEMENTS CORRECT.

The above Preliminary Statements are true and correct.

2. APPROVAL OF AGREEMENT.

By the execution hereof, the parties certify as follows:

2.1 JLI certifies that:

(a) the execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents creating JLI;

(b) this Agreement does not violate any of the terms or conditions of such governing documents and this Agreement is binding upon JLI and enforceable against JLI in accordance with its terms;

(c) the person or persons executing this Agreement on behalf of JLI are duly authorized and fully empowered to execute the same for and on behalf of JLI;

(d) JLI is duly authorized to transact business in the State of Florida and has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida;

(e) JLI and its business operations are in material compliance with all Federal, State and local laws.

2.2 The JEDC certifies that the execution and delivery hereof has been approved at a duly convened meeting of the JEDC and the same is binding upon the JEDC and enforceable against it in accordance with its terms.

2.3 The City certifies that the execution and delivery hereof is binding upon the City to the extent provided herein and enforceable against it in accordance with its terms.

3. TERMINATION OF PARKING OBLIGATION.

All City obligations to provide any type of parking or financial or other assistance related to parking with respect to the Landing as contained in the (i) Lease including without limitation the Fifth Amendment, (ii) Garage Development Agreement and (iii) Parking Rights Agreement are hereby terminated and released except as set forth in the Sixth Amendment to the Lease, the Amended Parking Rights Agreement and Amended Garage Development Agreement (the "Continuing Parking Obligations"). From and after the date hereof and except for the Continuing Parking Obligations, the City shall have no obligation to provide any parking for the Landing or JLI, or any financial assistance related to parking for the Landing or JLI.

4. MUTUAL LIMITED RELEASES FROM PRIOR OBLIGATIONS UNDER THE LEASE.

4.1 City and JEDC Limited Release.

With respect to any outstanding or unfulfilled obligations or liabilities of JLI under or in connection with the Lease (other than under the Sixth Amendment) accruing prior to the date hereof (the "Prior JLI Obligations"), the City and JEDC do hereby remise, release, acquit, satisfy, and forever discharge JLI, and its officers, directors, agents, representatives, attorneys and employees (collectively the "JLI Parties"), of and from all, and all manner of, action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bill, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever in law or in equity, which the City or JEDC, or any of their respective affiliates, subsidiaries, officers, directors, agents, representatives and employees (collectively the "City/JEDC Parties") ever had, now have or which any successor, personal representative or heir or assign of the City/JEDC Parties hereafter can, shall or may have, from the beginning of the world to the date of this Agreement against any of the JLI Parties related to the Prior JLI Obligations; provided however that this limited release shall not affect the obligations and liabilities of JLI under (i) the Lease, as amended by the Sixth Amendment, accruing on and after the date hereof (including without limitation all rental payment obligations under the Lease), or (ii) the Project Documents (collectively the "Continuing JLI Obligations"), and all such Continuing JLI Obligations shall remain in full force and effect.

4.2 **JLI Limited Release.**

With respect to any outstanding or unfulfilled obligations or liabilities of the City or JEDC under the (a) Lease (other than under the Sixth Amendment), (b) Parking Rights Agreement and (c) Garage Development Agreement accruing prior to the date hereof (the "Prior City/JEDC Obligations"), JLI hereby remises, releases, acquits, satisfies, and forever discharges the City/JEDC Parties, of and from all, and all manner of, action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bill, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever in law or in equity, which any of the JLI Parties ever had, now have or which any successor, personal representative or heir or assign of the JLI parties hereafter can, shall or may have, from the beginning of the world to the date of this Agreement against any of the City/JEDC Parties related to the Prior City/JEDC Obligations; provided however that this limited release shall not affect the obligations and liabilities of the City or JEDC under (i) the Lease, as amended by the Sixth Amendment, accruing on and after the date hereof, or (ii) the Project Documents (collectively the "Continuing City/JEDC Obligations"), and all such Continuing City/JEDC Obligations shall remain in full force and effect.

5. MISCELLANEOUS.

5.1 **Severability.**

The invalidity, illegality or inability to enforce of any one or more of the provisions of this Agreement shall not affect any other provisions of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.2 **Incorporation by Reference.**

All exhibits and other attachments to this Agreement that are referenced in this Agreement are by this reference made a part hereof and are incorporated herein.

5.3 **Counterparts.**

This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

5.4 **Parties to Agreement; Successors and Assigns.**

This is an agreement solely between the parties hereto, and the execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto. This Agreement shall be binding upon the parties hereto and their successors and assigns, and shall inure to the benefit of the parties hereto, and their successors and assigns.

5.5 **Venue; Applicable Law.**

The rights, obligations and remedies of the parties specified under this Agreement shall be interpreted and governed in all respects by the laws of the State of Florida. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Duval County, Florida, or in the Federal District Court for the Middle District of Florida, Jacksonville Division. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement.

5.6 **Further Assurances.**

The parties hereto upon request by any other party thereto shall:

5.6.1 promptly correct any defect, error or omission herein or in any of the Project Documents;

5.6.2 execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Project Documents;

5.6.3 provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Project Documents.

5.7 **Construction.**

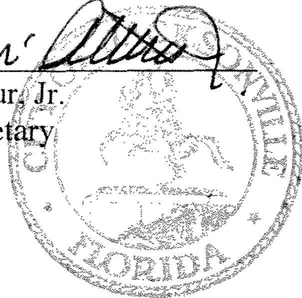
All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Each party further acknowledges that it has had ample time to review this Agreement and related documents with counsel of its choice. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted the

Agreement. Captions and headings in this Agreement are for convenience of reference only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

ATTEST:

By: ______________________
Neill W. McArthur, Jr.
Corporation Secretary



WITNESS:

____
Print Name: ______________________

CITY OF JACKSONVILLE

By: ______________________
John Peyton, Mayor
Date: 2-6-07

Pam Markham
Deputy Chief Administrative Offi
For: Mayor John Peyton
Under Authority of:
Executive Order No. 06-07

JACKSONVILLE ECONOMIC
DEVELOPMENT COMMISSION

By ______________________
M.C. Harden III, Chairman
Date: ______________________

WITNESS:

____
Print Name: ______________________

JACKSONVILLE LANDING INVESTMENTS, LLC, a Florida limited liability company

By: ______________________
Name: ______________________
Its: ______________________
Date: ______________________

FORM APPROVED:

____
Office of the General Counsel

Agreement. Captions and headings in this Agreement are for convenience of reference only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

ATTEST:

By:______________________
Neill W. McArthur, Jr.
Corporation Secretary

CITY OF JACKSONVILLE

By:______________________
John Peyton, Mayor
Date:______________________

WITNESS:

____
Print Name:______________________

JACKSONVILLE ECONOMIC DEVELOPMENT COMMISSION

By______________________
M.C. Harden III, Chairman
Date: 2/6/07

WITNESS:

____
Print Name:______________________

JACKSONVILLE LANDING INVESTMENTS, LLC, a Florida limited liability company

By:______________________
Name:______________________
Its:______________________
Date:______________________

FORM APPROVED:

____
Office of the General Counsel

Agreement. Captions and headings in this Agreement are for convenience of reference only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

ATTEST:

By:______________________
Neill W. McArthur, Jr.
Corporation Secretary

CITY OF JACKSONVILLE

By:______________________
John Peyton, Mayor
Date:______________________

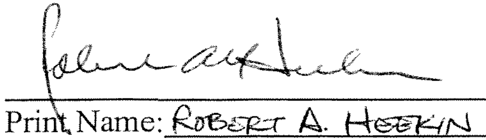
WITNESS:

____
Print Name:______________________

JACKSONVILLE ECONOMIC
DEVELOPMENT COMMISSION

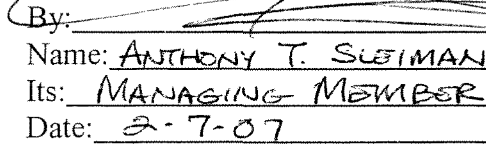
By______________________
M.C. Harden III, Chairman
Date:______________________

WITNESS:



Print Name: ROBERT A. HEEKIN

JACKSONVILLE LANDING INVESTMENTS, LLC, a Florida limited liability company



By:______________________
Name: ANTHONY T. SLEIMAN
Its: MANAGING MEMBER
Date: 2-7-07

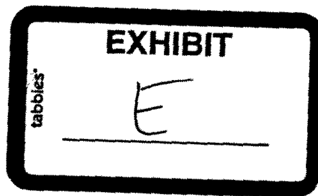
FORM APPROVED:

____
Office of the General Counsel

EXHIBIT A
THE LEASE

That certain Disposition, Development and Lease Agreement dated October 3, 1985, among Rouse-Jacksonville, Inc. (predecessor in interest to Rouse-Jacksonville, LLC), City of Jacksonville, and Jacksonville Downtown Development Authority (predecessor in interest to City); as amended by that certain Short Form Lease Agreement dated March 13, 1986, recorded in Official Records Volume 6138, page 2127, public records of Duval County, Florida; as amended by that certain First Amendment to Disposition, Development and Lease Agreement dated as of March 13, 1986; as amended by that certain Second Amendment to Disposition, Development and Lease Agreement dated October 26, 1987, recorded in Official Records Volume 6419, page 1334, public records of Duval County, Florida; as amended by that certain Third Amendment to Disposition, Development and Lease Agreement dated January 12, 1996; as amended by that certain Fourth Amendment to Disposition, Development and Lease Agreement dated December 5, 1998; and as amended by that certain Fifth Amendment to Disposition, Development and Lease Agreement dated June 25, 2001 (collectively, the "Lease"), which Lease was assigned to Jacksonville Landing Investments, LLC, as set forth in that certain Assignment and Assumption of City Lease by and between Rouse-Jacksonville, LLC, a Delaware limited liability company and Jacksonville Landing Investments, LLC, a Florida limited liability company, dated August 29, 2003 and recorded in Official Records Volume 11326, page 2118, public records of Duval County, Florida.

EXHIBIT "C"



SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT

This SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT (this "Second Amendment") is made as of the 8th day of February, 2007 (the "Effective Date"), between the **CITY OF JACKSONVILLE**, a municipal corporation and political subdivision of the State of Florida (the "City"), the **JACKSONVILLE ECONOMIC DEVELOPMENT COMMISSION** (the "JEDC") and **PROJECT RIVERWATCH, LLC**, a Florida limited liability company ("Developer").

Article 1. PRELIMINARY STATEMENTS

1.1 Background.

1.1.1 The City is the owner of the land, exterior common area improvements, parking areas and reversionary interest in the buildings of that certain commercial retail establishment currently known as the "Jacksonville Landing" (hereinafter the "Landing"), located in the Community Redevelopment Area on the North Bank of the St. Johns River in downtown Jacksonville. The City currently leases the land underlying the Landing buildings to Jacksonville Landing Investments, LLC, a Florida limited liability company ("JLI") for its operation of the Landing retail facility, pursuant to the terms and conditions of the Disposition, Development and Lease Agreement dated October 3, 1985, as more particularly described in **Exhibit A** (the "Lease"). The City entered into the Lease with Rouse-Jacksonville, Inc. ("Rouse") pursuant to solicited requests for proposal to develop and lease the Landing property, and Rouse later assigned its interests in the Lease to JLI pursuant to the Assignment and Assumption of City Lease dated August 29, 2003. Pursuant to the terms of the Lease, JLI owns and maintains the Landing buildings during the term of the Lease, and such ownership reverts to the City at the end of the Lease term.

1.1.2 The City has certain obligations under the Lease to provide parking for the Landing, and pursuant to the Fifth Amendment to the Lease dated June 25, 2001 (the "Fifth Amendment"), the City and Rouse agreed that the City could discharge those parking obligations by entering into the Redevelopment Agreement with Humana Medical Plan, Inc., a Florida corporation ("Humana") dated June 6, 2001, as amended by the Amendment to Redevelopment Agreement dated October 17, 2002. A true and correct copy of such redevelopment agreement and amendment are attached hereto as composite **Exhibit B** and incorporated herein by reference (collectively the "Garage Development Agreement"). The Garage Development Agreement required Humana to develop a parking garage on Humana's vacant property located at the southeast corner of Bay and Hogan Streets (the "Humana Garage") and reserve 300 daily and 375 night and weekend short term parking spaces for public use including use by Landing patrons (the "Public Parking Spaces").

1.1.3 The Garage Development Agreement also included a parking validation program to be funded in part by the City to provide parking discounts or free parking for Landing patrons at the Humana Garage (the "Parking Validation"). The terms of the Parking Validation and reservation of the Public Parking Spaces are also set forth in the Parking Rights

Agreement dated June 4, 2001 between the City, Rouse and Humana (the "Parking Rights Agreement"), and the parties are simultaneously herewith entering into the Amended Parking Rights Agreement in the form of attached **Exhibit C** (the "Amended Parking Rights Agreement"). In those agreements, the City agreed to contribute $3,000,000 to Humana upon the opening of the Humana Garage for the reservation of the Public Parking Spaces, and also agreed to pay Humana $500,000 upon such garage opening for the Parking Validation for the first five years. The City further agreed to pay up to $131,250 per year beginning in year 6 and continuing until 2031 for the continuation of the Parking Validation.

1.1.4 Humana did not build the Humana Garage and later contracted to sell the Humana Garage pursuant to that certain Purchase and Sale Agreement between Humana and Developer's predecessor-in-interest, Capital Partners, Inc. (as subsequently assigned to 76L Owners LLC, a Delaware limited liability company, and then to Developer), dated June 5, 2003, as thereafter amended by First Amendment dated July 21, 2003, Second Amendment dated August 27, 2003, Third Amendment dated October 31, 2003, Fourth Amendment dated November 21, 2003, Fifth Amendment dated December 5, 2003, Sixth Amendment dated December 12, 2003, Seventh Amendment dated December 19, 2003, Eighth Amendment dated January 16, 2004, and Ninth Amendment dated February 8, 2007 (collectively, the "Humana Sales Agreement"). Developer plans to develop a mixed-use development on the site that will include a parking garage large enough to include the Public Parking Spaces and such garage will include up to 72 residential units on its exterior (such garage and condominium units being hereafter referred to collectively as the "Developer Garage"). Developer has assumed Humana's obligations under the Garage Development Agreement and the Parking Rights Agreement pursuant to and as set forth in the Assignment and Assumption of Redevelopment Agreement and Parking Rights Agreement dated contemporaneously herewith between Developer and Humana in the form of attached **Exhibit D** (the "Assignment and Assumption Agreement").

1.1.5 In the Sixth Amendment to the Lease dated simultaneously herewith (the "Sixth Amendment"), the City, JEDC and JLI are entering into the Release and Consent to Assignment Agreement with Humana dated simultaneously herewith, pursuant to which the City, JEDC and JLI are consenting to Humana's assignment to Developer of all of Humana's rights and obligations under the Garage Development Agreement and the Parking Rights Agreement, and JLI is consenting to this Second Amendment.

1.1.6 The parties are entering into this Second Amendment for purposes of (i) extending the Humana Garage construction deadline set forth in the Garage Development Agreement in order to allow Developer time to build the Developer Garage, (ii) providing for certain adjustments to the Humana Garage design and specifications to conform to the design and specifications of the Developer Garage, and (iii) making certain other changes to the Garage Development Agreement that do not adversely affect the Public Parking Spaces or Parking Validation other than to change the annual payment to Developer beginning in year 6 to a fixed payment of $132,250.

1.2 **Recitals.** The recitals above are true and correct and incorporated herein by reference.

1.3 **Authority.**

The JEDC has authorized the execution of this Second Amendment and the Council of the City has further authorized such execution pursuant to City Ordinance 2006-957-E (the "Ordinance").

1.4 **No City Indebtedness.**

The City shall not incur any costs or indebtedness in connection with this Second Amendment apart from the costs and indebtedness that the City previously agreed to incur in connection with the Garage Development Agreement and the Parking Rights Agreement.

1.5 **Definitions.**

Capitalized terms not defined herein shall the meanings assigned to them in the Garage Development Agreement.

Article 2.
AMENDMENTS TO GARAGE DEVELOPMENT AGREEMENT

The Garage Development Agreement is hereby amended and modified as follows:

2.1 **Developer Substituted in Place of Humana; New Developer Obligations.** Pursuant to the Assignment and Assumption Agreement, the Developer has assumed all of Humana's rights and obligations under the Garage Development Agreement. Developer is substituted in the place of Humana in the Garage Development Agreement. Developer shall be directly liable to the City, JEDC and JLI for all of Humana's obligations under the Garage Development Agreement, and for all of the additional obligations of Developer under this Second Amendment. Notwithstanding the foregoing, Developer shall not be liable for any defaults of Humana under the Garage Development Agreement and the City is simultaneously herewith entering into a settlement agreement with Humana to resolve all such defaults. The parties hereto are therefore entering into this Second Amendment on the basis that (a) the City is (i) simultaneously herewith settling with Humana for all outstanding defaults under the Garage Development Agreement, (ii) accepting Developer as the assignee of Humana under the Garage Development Agreement, and (iii) extending and otherwise amending the Garage Development Agreement as provided in this Second Amendment, and (b) Developer is simultaneously herewith closing on the Humana Sales Agreement.

2.2 **Article I, paragraph 4**:

The Project Summary attached as Exhibit A to the Garage Development Agreement is replaced with the Project Summary attached hereto as **Exhibit E**, and the "Project" is the project described in such new Project Summary. The approximate number of parking spaces in the Developer Garage will be not less than 900. The Project will not include any office space and there will be not less than 15,000 square feet of retail space on the ground floor exterior of the garage. Developer plans to make a capital investment of approximately $19,000,000 in developing the Developer Garage.

2.3 **Article I, paragraph 6**: Article I, paragraph 6 is deleted and replaced in its entirely with the following:

"6. Jacksonville Small and Emerging Businesses (JSEB) Program.

The Developer, in further recognition of and consideration for the public funds provided to assist the Developer pursuant to this Agreement, hereby acknowledges the importance of affording to small and emerging vendors and contractors the full and reasonable opportunity to provide materials and services. Therefore, the Developer hereby agrees as follows:

a. The Developer shall obtain from the City's Procurement Division the list of certified Jacksonville Small and Emerging Businesses ("JSEB"), and shall exercise good faith, in accordance with Municipal Ordinance Code Sections 126.601 et seq., to enter into contracts with City certified JSEBs to provide materials or services in an aggregate amount of not less than $1,263,500, which amount represents 19% of the City's maximum contribution to the Project with respect to the development activities of the Project over the term of this Agreement.

b. The Developer shall submit JSEB report(s) regarding the Developer's actual use of City certified JSEBs on the Project, (i) on the date of any request for City funds which are payable prior to the Completion of Construction, (ii) upon Completion of Construction, and, if the Developer has not reached its goal for use of JSEBs described above prior to Completion of Construction, quarterly thereafter until said goal is reached. The form of the report to be used for the purposes of this section is attached hereto as **Exhibit F** (the "JSEB REPORTING FORM")."

2.4 **Section 2.5**: The proposed capital investment amount of "$14.2 million" is replaced with "$19 million."

2.5 **Section 3.2**: The zoning change contemplated in section 3.2 has been accomplished and the City has fulfilled all of its obligations under section 3.2.

2.6 **Section 3.3**: The vacation and abandonment of streets, parking and park areas as described in this section, and the City's conveyance of the City Property to Humana, have been completed. The City has therefore fulfilled all of its obligations under section 3.3. Pursuant to the Special Warranty Deed from the City to Humana dated October 17, 2002, and recorded at Book 10748, page 1005 of the current public records of Duval County, Florida (the "Sister Cities Deed"), the City conveyed the "Sister Cities Parcel" described therein to Humana with a right of reversion in the City if Humana did not construct the Humana Garage by a certain date that has already passed. Although Humana did not construct the Humana Garage, the Developer and City have extended the time for the construction of the Developer Garage to provide at least the same number of public parking spaces that Humana agreed to construct in the Humana Garage. The City, Humana and Developer are simultaneously herewith executing the Cancellation and Waiver of Reverter in Special Warranty Deed in the form of attached **Exhibit G** for recording in

the Duval County public records, pursuant to which the reverter provision of the Sister Cities Deed is being canceled and waived because at least one of the following has occurred on or before the date hereof: (a) the recording of a mortgage securing a loan to finance the construction of the Developer Garage, or (b) the receipt by the Developer of binding written commitments from third parties to invest not less than $3,800,000 in equity to finance pre-construction and construction costs of the Developer Garage, and the funding of not less than $2,000,000 of such committed amounts to the Developer in cash. The parties agree that if the Developer later defaults in its obligation to build the Developer Garage, the City's damages with respect to the Sister Cities Parcel shall be $2,000,000.

2.7 **Section 3.4**: The City created the "Easement" described in this section by executing with Humana the Permit and Hold Harmless Agreement dated October 17, 2002, recorded at Book 10748, Page 992 of the current public records of Duval County, Florida (the "2002 Permit and Hold Harmless Agreement"), and the City has therefore fulfilled all of its obligations under section 3.4. Although the 2002 Permit and Hold Harmless Agreement would have terminated under its terms because Humana did not construct the Humana Garage, Humana is assigning its rights under the 2002 Permit and Hold Harmless Agreement to Developer, and Developer is assuming Humana's obligations thereunder, pursuant to the Assignment of Permit and Hold Harmless Agreement in the form of attached **Exhibit H**, to enable Developer to complete the Developer Garage.

2.8 **Section 3.6**: The performance schedule attached as Exhibit C to the Garage Development Agreement is replaced with the performance schedule attached as **Exhibit I** hereto.

2.9 **Section 3.7**: Developer is substituted in the place of Humana under the Garage Development Agreement, and therefore all representations and warranties of Humana contained in section 3.7 and elsewhere in the Garage Development Agreement are now made by Developer in the place of Humana and shall bind and be enforceable against Developer.

2.10 **Section 4.1**: The outstanding obligations of the parties under the Fifth Amendment have been superseded by the Sixth Amendment, and the City and JLI are executing and delivering to each other the Sixth Amendment between JLI and the City contemporaneously with the execution of this Second Amendment between the City and Developer.

2.11 **Section 5.3**: The second, third, fourth and fifth sentences of Section 5.3 are deleted and replaced with the following:

> "Starting in the sixth year of the validation program, the City agrees to make an annual validation payment of $132,250 through the Initial Term of the Amended Parking Rights Agreement ending March 13, 2031."

2.12 **Section 5.5**: New Section 5.5 is added as follows:

> "5.5. Utilities Relocation Payment. The construction of the Project will require Developer to relocate certain utilities currently located in the existing right of way adjacent to the Sister Cities Parcel. Upon completion of the Developer Garage and the opening of such garage to the public, the City will pay to the Developer its costs (not including Developer's internal salaries or development

fees) of relocating such utilities, provided that the City's payment obligation shall not exceed $500,000. The City will make such payment after Developer provides to the City paid invoices, receipts or other evidence of such utilities relocation costs as may be requested by the JEDC."

2.13 **<u>Section 6.1(a)</u>**: As stated above, Exhibit A to the Garage Development Agreement (Project Summary) is replaced with **Exhibit E** attached hereto.

2.14 **<u>Section 6.3</u>**: The "Downtown Development Authority Design Review Committee" is now known as the Downtown Design Review Committee. The City guidelines and standards in effect as of the date of such committee's review of the Exterior Design Plans will govern the committee's recommendations with respect to such plans. Developer will promptly provide a final, approved copy of the Exterior Design Plans to the JEDC but such plans will not be attached to this Second Amendment.

2.15 **<u>Section 7.1</u>**: Exhibit D (Parking Rights Agreement) of the Garage Development Agreement is replaced with **<u>Exhibit C</u>** (Amended Parking Rights Agreement) attached hereto.

2.16 **<u>Section 7.2</u>**: Section 7.2 is replaced with the following:

"On a quarterly basis until the Developer Garage is completed or no later than thirty (30) days following a request by the JEDC or the City, Developer shall submit reports to the JEDC regarding Developer's activities affecting the implementation of this Agreement, including a narrative summary of progress on the Developer Garage. Samples of the general forms of these reports are attached hereto as **<u>Exhibit J</u>** (the "<u>Quarterly Survey</u>"); however the specific data requested may vary from the forms attached. Within thirty (30) days following the request of the JEDC or the City, Developer shall provide the JEDC or the City with additional information or status reports requested by the JEDC or the City at any time."

2.17 **<u>Section 7.3</u>**: The Community Service Commitment attached as Exhibit F to the Garage Development Agreement is replaced with the Community Service Commitment attached as **<u>Exhibit K</u>** hereto.

2.18 **<u>Section 8.1(a) and (b)</u>**: The City obligations in sections 8.1(a) and (b) have been fulfilled, and therefore the references to such obligations in these default sections are now moot.

2.19 **<u>Section 8.1(c)</u>**: The City obligation to convey the City Property has been accomplished and therefore any reference to such obligation in this default section is moot. Exhibit C to the Garage Development Agreement (Performance Schedule) is replaced with **<u>Exhibit I</u>** attached hereto.

2.20 **<u>Section 8.2</u>**: Sections 8.2(a) and 8.2(b) are replaced by the following:

"8.2 <u>Developer Default</u>. If Developer defaults in the performance of any material obligation hereunder including failing to comply with any and all of the deadlines in the Performance Schedule, then the City will have the right to terminate this Agreement if the default continues for 30 days after the City provides written notice of the default to Developer; provided however that if such default cannot be reasonably

cured within such 30-day period and Developer has commenced and is diligently proceeding to cure such default, then the City will allow Developer an additional 45 days in which to cure such default provided that Developer continues to diligently proceed to cure such default within such additional time period. If a delay by the Developer results from an event described in Section 10.4, the Performance Schedule shall be extended for the period of time lost by such delay. Except for delays caused by events described in Section 10.4, Developer agrees to devote all necessary resources to (i) beginning relocation of the utilities, and (ii) completing the parking deck and opening it for public parking, all within the respective time periods set forth in the Performance Schedule attached hereto as **Exhibit I**. If after beginning relocation of the utilities, the Developer ceases active, physical, ongoing material construction activity for a period or periods of more than 90 days in the aggregate for any reason other than an event described in Section 10.4, such inactivity shall constitute a material default hereunder. Developer acknowledges and agrees that as more specifically set forth in section 10.17 hereof, upon Developer's default, whether declared by the City or JLI, and the expiration of applicable cure periods, then the City will thereupon be relieved of all obligations to pay to Developer the $3,000,000 grant described in sections 5.1 and 5.2 (the "Garage Grant"), the validation payments described in section 5.3 ("Validation Payments") and the Utilities Relocation Payment (described in section 5.5) under this Second Amendment and under the Amended Parking Rights Agreement, and the City will instead pay to JLI the Garage Grant, and begin paying the Validation Payments to JLI under the terms of the Amended Parking Rights Agreement (as if JLI were substituted for Developer under such agreement), upon the opening to the public of a new parking garage constructed by JLI (the "JLI Garage"). Additionally, assuming the payment of the Garage Grant and Validation Payments to JLI, the City will also reimburse JLI upon the opening of the JLI Garage to the public, up to $500,000 (the amount of the maximum Utilities Relocation Payment) of JLI's costs incurred in relocating utilities, all as more specifically described in section 10.17 hereof. Developer consents to such payments to JLI in the event of such default, and Developer acknowledges and agrees that it will not have any claim or recourse against the City for any such payments to JLI in the event of such default. As provided in section 3.3 hereof, if the Developer defaults hereunder, the City's damages with respect to the Sister Cities Parcel shall be $2,000,000. In the event of Developer's default hereunder, the City's only remedy apart from the City's right to terminate this Agreement and be relieved from all obligations hereunder, shall be such $2,000,000 in damages (plus any applicable pre-judgment interest)."

2.21 **Section 8.2(c)**: A new section 8.2(c) is added and provides as follows:

"(c) Developer's failure to provide any of the reports described in section 7.2 within 30 days after written request by the JEDC, shall result in a reduction in the Developer Payment in the amount of $5,000 for each such failure."

2.22 **Sections 9.1 and 9.3**: Exhibit D (Parking Rights Agreement) as referenced in these sections is replaced with **Exhibit C** (Amended Parking Rights Agreement) attached hereto.

2.23 **Section 9.3**: Section 9.3 is replaced with the following:

"9.3 Restrictions on Future Assignments. Developer shall provide Agency written notice of any proposed assignment of this Agreement or the Parking Rights Agreement attached as **Exhibit "D"**, and the Agency, through its Executive Director, shall approve or reject such assignment within forty-five (45) days after receipt of such notice. Agency shall approve such assignment on the following conditions: (a) the proposed assignee is a comparable operator of parking decks, (b) the proposed assignee assumes in writing all of the obligations of Developer hereunder and under the Parking Rights Agreement attached as **Exhibit "D"**, and (c) the proposed assignee, in the reasonable opinion of the City, possesses the experience, qualifications, good reputation and financial resources to own the Project and insure compliance with this Agreement and the Parking Rights Agreement in a manner consistent with the quality, character, reputation and economic viability of the Project. Additionally, upon the closing of a construction loan to finance the construction of the Developer Garage, Developer shall be entitled to collaterally assign this Agreement and the Parking Rights Agreement to the construction lender as security for such loan."

2.24 **Section 10.5(c)**: The addresses for notice to the Developer are replaced with the following:

(c) The Developer:

Project RiverWatch, LLC
205 East Central Boulevard
Suite 600
Orlando, Florida 32801
Fax: 407-540-9955

With a copy to:

Jeff Decker
Baker & Hostetler LLP
200 South Orange Avenue
SunTrust Center - Suite 2300
Orlando, FL 32801
(407) 649-4017
(407) 841-0168 (fax

2.25 **Other Modifications**:

All references in the Garage Development Agreement to the "Downtown Development Authority" are replaced with the "JEDC".

2.26 **Additions to Article 10**: The following sections shall be added to the end of Article 10 except for section 10.17, which shall be substituted for the existing section 10.17

10.17. JLI as Beneficiary.

(a) JLI is hereby expressly designated a third party beneficiary of this Agreement; provided, however, (i) that in the event of any default by the Developer under Section 8.2, JLI's remedies against Developer shall be limited to the right to declare a default by the Developer with respect to Developer's failure to meet the Performance Schedule under section 8.2 if the City fails to declare such default within 15 days after a request from JLI to declare such default and provided, however, that the City had the right under this Agreement to declare the Developer in default; and (ii) that JLI shall expressly not have any remedy for damages at law or for specific performance against Developer.

(b) Following a default by Developer, and whether declared by the City or JLI, and the expiration of applicable cure periods, then the City will thereupon be relieved of all obligations to pay to Developer the Garage Grant, Validation Payments and the Utilities Relocation Payment under this Second Amendment and under the Amended Parking Rights Agreement, and the City will instead pay to JLI the Garage Grant, and begin paying the Validation Payments to JLI under the terms of the Amended Parking Rights Agreement (as if JLI were substituted for Developer under such agreement), upon the opening to the public of a new parking garage constructed by JLI (the "JLI Garage"). Additionally, assuming the payment of the Garage Grant and Validation Payments to JLI, the City will also reimburse JLI upon the opening of the JLI Garage to the public, up to $500,000 (the amount of the maximum Utilities Relocation Payment) of JLI's costs incurred in relocating utilities if (a) the JLI Garage is not located on the Property (as that term is defined in the Sixth Amendment), and (b) the JLI Garage site chosen by JLI contains utilities that JLI is required by the City or JEA to relocate in order to build the JLI Garage on such site; provided however that such payment shall not exceed JLI's actual out-of-pocket costs of relocating such utilities as demonstrated by paid invoices, receipts or other evidence of such costs requested by the JEDC or City. The JLI Garage shall (i) be located on the Property or other location that JLI determines within the area of downtown Jacksonville bounded by Ocean Street, Forsyth Street, Julia Street and the St. Johns River or other area subject to JEDC approval (the "Garage Location Area"), (ii) contain at least the Public Parking Spaces (as that term is defined in the Sixth Amendment), which shall be constructed pursuant to the design specifications (including without limitation the specifications concerning the location and configuration of the parking spaces within the garage) set forth in the Amended Parking Rights Agreement, and (iii) be open during the garage hours of operation described in the Amended Parking Rights Agreement. JLI hereby agrees to such parking space location and design specifications, and JLI agrees to such garage hours of operation for the JLI Garage, with respect to the Public Parking Spaces, throughout the Lease term including any renewal periods. Notwithstanding anything to the contrary herein, the JLI Garage, if not constructed as part of the Improvements (as that term is defined in the Sixth Amendment), shall contain the Public Parking Spaces (i.e., 300 daily and 375 night and weekend spaces as more specifically described in the Amended Parking Rights Agreement), but if constructed as part of the Improvements, the JLI Garage shall contain the Public Parking Spaces plus at least 243 additional short-term public parking spaces, which is the number of such spaces presently located on the Property. If the JLI Garage is built as part of the Improvements, the City will not be obligated to pay the Garage Grant or Utilities Relocation Payment, or begin paying the Validation Payments, to JLI until all such parking spaces (Public Parking Spaces and 243 additional spaces) are open to the public. The parties agree that JLI shall not be entitled to any portion of the Garage Grant or Validation Payments or Utilities Relocation Payment for replacing any of the presently existing parking spaces on the Property, and JLI shall only be entitled to such grant/payments for constructing

new Public Parking Spaces in addition to the existing parking spaces. Notwithstanding the foregoing, the Public Parking Spaces need not be open to the public until 10 a.m.

10.19 Authority of JEDC to Monitor Compliance.

During all periods of design and construction, the Executive Director of the JEDC and the City's Directors of Public Works and Planning and Development shall have the authority to monitor compliance by Developer with the provisions of this Agreement. Insofar as practicable, the JEDC shall coordinate such monitoring and supervising activity with those undertaken by the City so as to minimize duplicate activity. To that end, during the period of construction and with prior notice to Developer, representatives of the JEDC and the City shall have the right of access to the Property during normal construction hours.

10.20 Development Decisions.

Subject to Developer's compliance with the terms and conditions of this Agreement, and including without limitation the covenants and restrictions provided herein and in the Deed, Developer shall have discretion and control, free from interference, interruption or disturbance from the City or any of its agencies or authorities including, without limitation the JEDC, in all matters relating to the management, development, redevelopment, construction and operation of the Developer Garage, provided the same shall conform to all applicable state and local laws, ordinances and regulations (including without limitation applicable zoning, subdivision, building and fire codes). Subject to Developer's compliance with all applicable laws and the terms and conditions of this Agreement, Developer's discretion, control and authority shall include without limitation (a) the construction and design of the Developer Garage, (b) the selection, approval, hiring and discharge of engineers, architects, subcontractors, professionals and other third parties; (c) the negotiation and execution of contracts, agreements, easements and other documents with third parties; (d) the designation of plans and specifications for all aspects of the Developer Garage as Developer deems appropriate (subject to approvals required by law including without limitation the approval of the Downtown Design Review Committee or other similar governmental body); and (e) all capital and financing for the development of the Developer Garage and the terms thereof.

10.21 Incorporation by Reference.

All exhibits and other attachments to this Agreement that are referenced in this Agreement are by this reference made a part hereof and are incorporated herein.

10.22 Counterparts.

This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

10.23 Perpetual Obligations.

Whenever a party hereto has an obligation which is perpetual, such obligation can be modified, but only with the prior written consent of both the City and Developer.

10.24 Civil Rights.

Developer agrees to comply with all of the terms and requirements of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, and the antidiscrimination provisions of Chapter 126, Part 4, of the City Ordinance Code, and further agrees that in its operation under this Agreement it will not discriminate against anyone on the basis of race, color, age, disability, sex or national origin.

10.25 Further Assurances.

The parties hereto upon request by any other party thereto shall:

(a) promptly correct any defect, error or omission herein or in any document executed in connection herewith (collectively the "Project Documents");

(b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Project Documents;

(c) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by the City to carry out the purposes of the Project Documents.

10.26 Construction.

All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Developer further acknowledges that it has had ample time to review this Agreement and related documents with counsel of its choice. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted this Agreement. Captions and headings in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

10.27 Retention of Records/Audit

The Developer agrees:

(a) To establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the City under this Agreement.

(b) To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of six (6) years after completion of the date of final payment by the City under this Agreement. If an audit has been initiated and audit findings have not been resolved at the end of six (6) years, the records shall be retained until resolution of the audit findings or any litigation that may be based on the terms of this Agreement, at no additional cost to the City.

(c) Upon demand, at no additional cost to the City, to facilitate the reasonable duplication and transfer of any records or documents during the required retention period.

(d) To assure that these records shall be subject at all reasonable times to inspection, review, copying, or audit by personnel duly authorized by the City.

(e) At all reasonable times for as long as records are maintained, to allow persons duly authorized by the City full access to and the right to examine any of the Developer's contracts and related records and documents, regardless of the form in which kept.

(f) To ensure that all related party transactions are disclosed to the auditor.

(g) To include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments.

(h) To permit at reasonable times and upon reasonable notice, persons duly authorized by the City to inspect and copy any records, papers, documents, facilities, goods and services of the Developer which are relevant to this Agreement, and to interview any employees and subcontractor employees of the Developer to assure the City of the satisfactory performance of the terms and conditions of this Agreement. Following such review, the City will deliver to the Developer a written report of its findings and request for development by the Developer of a corrective action plan where appropriate. The Developer hereby agrees to timely correct all reasonable deficiencies identified in the corrective action plan within reasonable time periods under the circumstances.

10.28 Ethics.

The Developer represents that it has reviewed the provisions of the Jacksonville Ethics Code, as codified in Chapter 602, *Ordinance Code*, and the provisions of the Jacksonville Purchasing Code, as codified in Chapter 126, *Ordinance Code.*

10.29 Conflict of Interest.

The parties will follow the provisions of Section 126.110, *Ordinance Code* with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the City, to the extent the parties are aware of the same.

10.30 Public Entity Crimes Notice.

The parties are aware and understand that a person or affiliate who has been placed on the State of Florida Convicted Vendor List, following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public

work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity, in excess of $25,000.00, for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

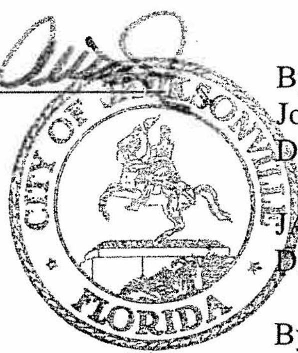
Article 3.
OTHER PROVISIONS UNAFFECTED

Except as amended hereby, the provisions of the Garage Development Agreement shall remain in full force and effect, and shall be binding upon the parties to this Second Amendment.

IN WITNESS WHEREOF, this Second Amendment is executed the day and year above written.

ATTEST:

By: [signature]
Neill W. McArthur, Jr.
Corporation Secretary



CITY OF JACKSONVILLE

By: [signature]
John Peyton, Mayor
Date: 2-6-07

Pam Markham
Deputy Chief Administrative Officer
For: Mayor John Peyton
Under Authority of:
Executive Order No. 06-07

JACKSONVILLE ECONOMIC DEVELOPMENT COMMISSION

By______________________
M.C. Harden III, Chairman
Date:______________________

WITNESS:

____
Print Name:______________________

PROJECT RIVERWATCH, LLC, a Florida limited liability company

By:______________________
Name:______________________
Its:______________________
Date:______________________

work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity, in excess of $25,000.00, for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

Article 3.
OTHER PROVISIONS UNAFFECTED

Except as amended hereby, the provisions of the Garage Development Agreement shall remain in full force and effect, and shall be binding upon the parties to this Second Amendment.

IN WITNESS WHEREOF, this Second Amendment is executed the day and year above written.

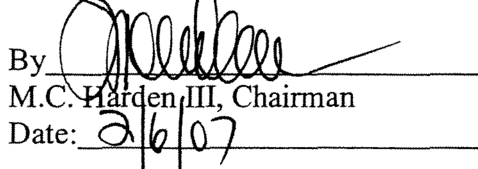
ATTEST:

By:_________________________
Neill W. McArthur, Jr.
Corporation Secretary

CITY OF JACKSONVILLE

By:_________________________
John Peyton, Mayor
Date:________________________

JACKSONVILLE ECONOMIC
DEVELOPMENT COMMISSION



By__________________________
M.C. Harden, III, Chairman
Date: 2/6/07

WITNESS:

____
Print Name:____________________

PROJECT RIVERWATCH, LLC, a Florida limited liability company

By:_________________________
Name:_______________________
Its:_________________________
Date:________________________

work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity, in excess of $25,000.00, for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

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ATTEST:

By:____________________________
Neill W. McArthur, Jr.
Corporation Secretary

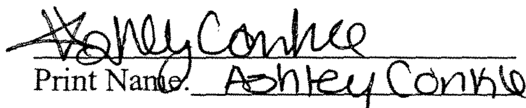
CITY OF JACKSONVILLE

By:____________________________
John Peyton, Mayor
Date:__________________________

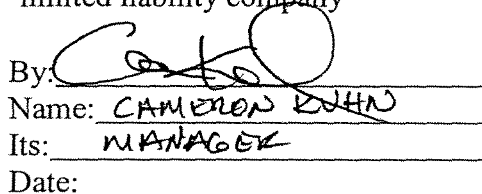
JACKSONVILLE ECONOMIC DEVELOPMENT COMMISSION

By____________________________
M.C. Harden III, Chairman
Date:__________________________

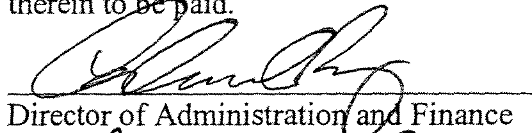
WITNESS:


Print Name: Ashley Conkle

PROJECT RIVERWATCH, LLC, a Florida limited liability company


By:____________________________
Name: CAMERON KUHN
Its: MANAGER
Date:__________________________

IN COMPLIANCE with the Charter of the City of Jacksonville, I hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation to cover the foregoing contract, and provision has been made for the payment of monies provided therein to be paid.



Director of Administration and Finance

FORM APPROVED:

Office of the General Counsel

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EXHIBITS

EXHIBIT A:	THE LEASE
EXHIBIT B:	REDEVELOPMENT AGREEMENT
EXHIBIT B-1:	AMENDMENT TO REDEVELOPMENT AGREEMENT
EXHIBIT C:	AMENDED PARKING RIGHTS AGREEMENT
EXHIBIT D:	ASSIGNMENT AND ASSUMPTION AGREEMENT
EXHIBIT E:	PROJECT SUMMARY
EXHIBIT F:	JSEB REPORTING FORM
EXHIBIT G:	CANCELLATION AND WAIVER OF REVERTER IN SPECIAL WARRANTY DEED
EXHIBIT H	ASSIGNMENT OF PERMIT AND HOLD HARMLESS AGREEMENT
EXHIBIT I:	PERFORMANCE SCHEDULE
EXHIBIT J:	QUARTERLY SURVEY
EXHIBIT K:	COMMUNITY SERVICE COMMITMENT

EXHIBIT A
THE LEASE

That certain Disposition, Development and Lease Agreement dated October 3, 1985, among Rouse-Jacksonville, Inc. (predecessor in interest to Rouse-Jacksonville, LLC), City of Jacksonville, and Jacksonville Downtown Development Authority (predecessor in interest to City); as amended by that certain Short Form Lease Agreement dated March 13, 1986, recorded in Official Records Volume 6138, page 2127, public records of Duval County, Florida; as amended by that certain First Amendment to Disposition, Development and Lease Agreement dated as of March 13, 1986; as amended by that certain Second Amendment to Disposition, Development and Lease Agreement dated October 26, 1987, recorded in Official Records Volume 6419, page 1334, public records of Duval County, Florida; as amended by that certain Third Amendment to Disposition, Development and Lease Agreement dated January 12, 1996; as amended by that certain Fourth Amendment to Disposition, Development and Lease Agreement dated December 5, 1998; and as amended by that certain Fifth Amendment to Disposition, Development and Lease Agreement dated June 25, 2001 (collectively, the "Lease"), which Lease was assigned to Jacksonville Landing Investments, LLC, as set forth in that certain Assignment and Assumption of City Lease by and between Rouse-Jacksonville, LLC, a Delaware limited liability company and Jacksonville Landing Investments, LLC, a Florida limited liability company, dated August 29, 2003 and recorded in Official Records Volume 11326, page 2118, public records of Duval County, Florida.

Exhibits B – K to Second Amendment to Redevelopment Agreement

For purposes of Exhibit E to this Release and Consent to Assignment and Assumption Agreement, the parties to this Second Amendment to Redevelopment Agreement have mutually agreed NOT to attach these exhibits to this document due to their length and because each party was provided at Closing an original of this document. The parties acknowledge and agree that the original of the referenced document delivered to the party in possession of this original counterpart of the Second Amendment to Redevelopment Agreement shall serve as the Exhibit for this Second Amendment to Redevelopment Agreement.

EXHIBIT "D"

EXHIBIT "F"

FIRST AMENDMENT TO PARKING RIGHTS AGREEMENT

THIS FIRST AMENDMENT TO PARKING RIGHTS AGREEMENT (the "First Amendment") is effective as of February 8th, 2007, and is made by and among Project RiverWatch, LLC, a Florida limited liability company ("Developer"), The City of Jacksonville, a Florida municipality and political subdivision of the State of Florida (the "City"), The Jacksonville Economic Development Commission (the "JEDC") and Jacksonville Landing Investments, LLC, a Florida limited liability company ("Landing Investments").

WITNESSETH:

WHEREAS, Humana Medical Plan, Inc. ("Humana"), the City, the JEDC and Rouse-Jacksonville, Inc. ("Rouse") previously entered into a certain Parking Rights Agreement dated as of June 4, 2001 (the "Original Agreement"), in connection with the anticipated development of a parking facility (the "Garage") by Humana, pursuant to the Redevelopment Agreement dated June 6, 2001, as amended on October 17, 2002 between the City and Humana (the "Original Garage Development Agreement"), on certain real property owned by Humana and defined in the Original Agreement as the "Humana Parcel," which Garage was intended to provide parking for the occupants, licensees and invitees of the office tower (now commonly known as the "SunTrust Tower") which was owned by Humana and located adjacent to the Humana Parcel (the "Office Building"); and

WHEREAS, the Original Agreement also provided that the Garage would be used, in part, for certain public parking and for validated parking pursuant to the City Validation Program and Lunch Validation Program (as each such term is defined in the Original Agreement"); and

WHEREAS, the City Validation Program and the Lunch Validation Program (collectively, the "Validation Programs") were intended in part to benefit the commercial development known as "The Landing" which is located adjacent to the Humana Parcel; and

WHEREAS, simultaneously herewith Developer and the City are entering into the Second Amendment to Redevelopment Agreement (the "Second Amendment to Redevelopment Agreement") whereby Developer is assuming certain obligations of Humana (but not Humana's defaults) under the Original Garage Development Agreement to construct the Garage; and

WHEREAS, Developer will, on the date hereof, purchase from Humana the Humana Parcel and, in connection therewith, will be assigned, and will assume Humana's rights and obligations arising from and after the date hereof under, the Original Agreement and Original Garage Development Agreement; and

WHEREAS, Landing Investments has succeeded to Rouse's interest in the Landing and, in connection therewith, was assigned, and has assumed Rouse's rights and obligations under, the Original Agreement; and

WHEREAS, Developer's affiliate, Jacksonville Riverside Tower, LLC, has previously acquired the Office Building;

WHEREAS, Developer intends to develop and construct on the Humana Parcel a mixed-use condominium project consisting of a residential tower (the "Residential Tower"), retail and commercial space (the "Commercial Space") and the Garage (the "Project"); and

WHEREAS, the Garage which Developer intends to construct is intended to provide parking to support the residential and retail/commercial components of the Project, as well as to provide parking for the occupants, licensees and invitees of the Office Building and, but for such use of the Garage, Developer would not develop and construct the Project or the Garage; and

WHEREAS, the Original Agreement was entered into and set forth the parking parameters for the Garage based upon a project that Humana intended to develop that was significantly different than that proposed by Developer in that there was no residential component and a smaller retail component that that proposed by Developer; and

WHEREAS, the differences in the Project when compared to the project Humana intended to construct, including the different parking needs that the Project must support which were not contemplated by Humana's project, as well as the substantial differences in the costs and economic requirements of constructing a parking facility today compared to the year 2001 when the Original Agreement was executed, require that certain of the terms and conditions of the Original Agreement be amended in order to make the development, construction and operation of the Project, including the Garage, operationally and economically feasible; and

WHEREAS, Developer's purchase of the Humana Parcel and development and construction of the Project, as well as Developer's assumption of Humana's obligations arising from and after the date hereof under the Original Agreement are conditioned upon the amendment of the Original Agreement; and

WHEREAS, the parties, desiring to facilitate Developer's purchase of the Humana Parcel, development and construction of the Project, and the assumption of Humana's obligations arising from and after the date hereof under the Original Agreement, have agreed to amend the Original Agreement as provided herein.

NOW THEREFORE, in consideration of $10.00 and other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The recitals above are true and correct and incorporated herein by referenced.

2. Capitalized Terms. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Original Agreement.

3. Amendments to Original Agreement. The Original Agreement is hereby amended as follows:

(a) All references in the Original Agreement to "Humana Medical Plan, Inc." and "Humana" shall, from and after the date hereof shall mean and refer to Developer. All references in the Original Agreement to "Rouse-Jacksonville, Inc." and "Rouse" shall mean and refer to Landing Investments.

(b) The term "Project" shall have the meaning ascribed to it in the recitals set forth above.

(c) Section 1(d) is hereby deleted in its entirety and, in lieu thereof, there is substituted the following:

> "(d) Non-Peak Hours" shall mean, subject to modification pursuant to Section 9(a), from 5:00 pm until (i) 12:00 am, or (ii) one hour after the last tenant closes at the Landing, whichever is later, and during all Garage Hours on Saturdays, Sundays and the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day."

(d) A new subsection (e) is hereby added to Section 1 to read as follows:

> "(e) East Side Surface Lot" shall mean the parking lot lying to the east of and adjacent to the Land and known as the East Side Surface Lot."

(e) Section 3 is hereby deleted in its entirety and, in lieu thereof, there is substituted the following:

> "3. Allocation of Parking Spaces by Utilization.
>
> (a) Total Number of Spaces. The Garage shall have at all times a minimum of nine hundred (900) parking spaces.
>
> (b) Short-Term Parking Spaces. Three hundred (300) parking spaces during Peak Hours and an additional seventy-five (75) parking spaces during Non-Peak Hours shall be available for Short-Term Parking by the general public (the "Short-Term Parking Spaces").
>
> (c) Reservation of Short-Term Parking Spaces. The parties agree that the three hundred (300) Peak Hours Short-Term Parking Spaces shall be located on the ramps to be constructed for the first six (6) floors of the Garage (twenty-five (25) spaces on each side of each such ramp) or, at Developer's election, in such configuration on lower floors as Developer determines. The locations of the additional seventy-five (75) Non-Peak Hours Short-Term Parking Spaces shall be determined by Developer and shall be subject to relocation from time to time within the Garage.
>
> (d) Remainder of Parking Spaces and Use of Garage. Except as expressly set forth in this Agreement and subject to applicable law, Developer shall be entitled to exercise complete discretion, dominion and control over the Garage, the parking spaces therein and the use of the foregoing. Specifically, and without limiting in any way any rights, powers or and discretion of Developer with the respect to the Garage and

the parking spaces, Developer shall be entitled to provide parking spaces other than those that are designated Short-Term Parking Spaces to be used as such during Peak Hours or Non-Peak Hours, as applicable, (the "Long-Term Parking Spaces") (i) to anyone Developer determines, including, but not limited to, the general public; owners and tenants of commercial or residential condominium units in the Project, and their respective employees, agents, licensees and invitees; and owners and tenants of condominium units in the Office Building and their respective employees, agents, licensees and invitees, (ii) under such terms and conditions as Developer determines, and (iii) pursuant to such form and structure as Developer determines including hourly fee parking, grants of use rights, licenses, easements, deeded rights or other form of right or interest (which rights may constitute full-time or part-time exclusive or reserved use of parking spaces)."

(f) Section 5(b) is hereby deleted in its entirety and, in lieu thereof, there is substituted the following:

"(b) Parking Rates. It is the parties' intention that hourly parking rates: first, encourage the utilization of Short-Term Parking Spaces for short-term parking by the general public and, secondly, maximize net revenues from the Short-Term Spaces without discouraging such use of the Short-Term Parking Spaces. To this end, the short-term parking rates as of the Commencement Date shall be as follows: (i) for Short Term Parking Spaces from 11:00 am until 2:00 PM, Monday through Friday, not more than $1.00 per hour with a Landing validation (the "Lunch Validation Program"); and (ii) for all Short Term Parking Spaces there shall be no charge for parking during Non-Peak Hours with a Landing validation (the "City Validation Program"). Except for the parking rates specified in this paragraph 5(b)(i) and (ii), parking rates shall be based on market rates, with the initial rates being established on the Commencement Date at no more than the then current average market rates for the Four Thousand (4,000) parking spaces in privately–owned parking lots or garages closest to the Landing, excluding any parking spaces in lots or garages owned, operated or managed by the parties to this Agreement, their affiliates or subsidiaries. All of the above rates may be increased from time to time in the future, but not more frequently than annually, by an amount equal to the average percentage increase in rates for Short Term Parking charged for the Four Thousand (4,000) parking spaces in privately–owned parking lots or garages closest to the Landing, excluding any parking spaces in lots or garages owned, operated or managed by the parties to this Agreement, their affiliates or subsidiaries (the "Annual Rate Increase Cap")."

(g) Section 5(d) is hereby amended by deleting the second sentence therein in its entirety.

(h) Section 6 is hereby deleted in its entirety and, in lieu thereof, there is substituted the following:

> "6. Signage. During the Reservation Term, Developer to install and maintain lighted signs showing the availability of "Public Parking/Landing" in the Garage which signage shall be affixed to the Garage on any two (2) of the three sides of the Garage facing Water Street, Bay Street or Hogan Street as determined by Developer. The City shall pay all costs and expenses related to or associated with the purchase, installation, operation, maintenance, replacement and removal of such signs. The City agrees to place and maintain signs along nearby streets directing the public to the Garage. Developer, the City and Landing Investments shall agree upon the details of such signage plans, during the design phase of the Project. The parties' obligations relating to signage shall be subject to applicable laws and regulations. The JEDC shall use reasonable efforts to obtain such permits, exceptions or waivers as necessary for the signage contemplated by this Section 6. Developer agrees that the City and Landing Investments may refer to the Garage in its advertising and promotional materials."

(i) Section 7(b) is hereby deleted in its entirety and, in lieu thereof, there is substituted the following:

> "(b) In consideration for Developer accommodating the City Validation Program, the City shall pay to Developer the sum of Five Hundred Thousand and 00/100 Dollars ($500,000.00), which shall satisfy the City's responsibility to Developer for validation payments for the City Validation Program for the first five (5) years following the Commencement Date (the "Initial Validation Payment"). The Initial Validation Payment shall be paid to Developer within thirty (30) days following the Commencement Date. After the fifth (5th) anniversary of the Commencement Date, the City shall begin making annual parking validation payments to Developer. The annual payments shall be paid on the applicable anniversary dates of the Commencement Date in advance in an amount equal to One Hundred Thirty-two Thousand Two Hundred Fifty and 00/100 Dollars ($132,250.00) each. The annual City validation payments shall continue each year until the earlier of, (i) March 13, 2031, or (ii) the date Developer receives joint written notification from the City and Landing Investments to terminate the City Validation Program (the "City Validation Termination Date"). Additionally, beginning on the Commencement Date and continuing until the City Validation Termination Date (as hereafter defined), Participating Merchants will pay, and Developer shall be entitled to receive, $1.00 for each parking validation pursuant to the City Validation Program. After the first year of City Validation Program, the Participating Merchant rate may be increased

from time to time, but no more frequently than annually, subject to the Annual Rate Increase Cap."

(j) Section 7(e) is hereby deleted in its entirety.

(k) Section 8(a) is hereby amended by deleting the first sentence thereof in its entirety.

(l) Section 11 is hereby amended by deleting the phrase "are consistent" and in lieu thereof, substituting the phrase "do not conflict."

(m) Section 12(a) is hereby deleted in its entirety.

(n) Section 13 is hereby amended by deleting the reference to "Long-Term Parking Spaces" therein.

(o) Section 15(a) is hereby deleted in its entirety.

(p) Section 15(b) is hereby deleted in its entirety and, in lieu thereof, there is substituted the following:

> "(b) By Developer. The Garage shall not be used by Developer for any illegal purpose or in any manner to create any nuisance or trespass."

(q) Section 16(b) is hereby amended by adding the following phrase at the end of the first sentence: ", as determined by Developer."

(r) Section 18(a) is hereby deleted in its entirety and, in lieu thereof, there is substituted the following:

> "(a) By the City. The City shall not assign this Agreement or any right, title or interest therein, in whole or in part, or sublet all or any part of the Short-Term Parking Spaces or any other parking spaces within the Garage, without the prior written consent of Developer and Landing Investments."

(s) Section 18(b) is hereby amended as follows:

I. The list of "Qualified Parking Operators" therein by adding the following: any nationally or state recognized parking facility operator, any parking facility operator that owns, manages or operates a parking facility in downtown Jacksonville, Florida, any affiliate of Developer, Republic Parking, 841 Prudential Drive, Suite 50, Jacksonville, FL 32207, and System Parking, Inc., 37 N. Orange Avenue Suite 500, Orlando, FL 32801.

II. The fourth sentence is hereby deleted in its entirety and, in lieu thereof, there is substituted the following:

> "Any assignment other than in compliance with the foregoing shall require the prior approval of the City and Landing Investments, which approval shall not be unreasonably withheld, and the City and Landing Investments shall respond to notice of such assignment within 10 business days after receipt of same."

III. The requirement for prior approval of the City and Landing Investments is hereby deleted from the last sentence of Section 18(b).

(t) Section 19(b) is hereby amended by adding the following at the end thereof:

> "In addition to all other remedies available to the City and Landing Investments hereunder, upon a default by Developer, and expiration of applicable cure periods, in commencing, continuing or completing construction of the Garage by the times provided in this Agreement and the Second Amendment to Redevelopment Agreement, the City shall terminate this Agreement provided that Landing Investments also mutually agrees simultaneously with the City to terminate this Agreement, and in the event of such termination hereof by the City and Landing Investments, the obligation of Developer to provide 300 Short Term Parking Spaces during Peak Hours and 375 during Non-Peak Hours at the parking rates provided herein shall be offered by the City to Landing Investments pursuant to the terms of a separate agreement between the City and Landing Investments, and upon acceptance thereof by Landing Investments, the City's Reservation Payment and payments under the Validation Programs shall thereafter be payable to Landing Investments under such separate agreement and not to Developer."

(u) Section 20(c) is hereby amended by replacing the reference therein to "Reserved and Monthly Parking Spaces" with "Long-Term Parking Spaces."

(v) Section 27 is hereby amended by replacing the Notices information for Humana with the following:

"Project RiverWatch, LLC
205 East Central Boulevard
Suite 600
Orlando, Florida 32801
Attention: David Dix

With a copy to:

Baker & Hostetler LLP
200 South Orange Avenue
Suite 2300
Orlando, Florida 32801
Attention: Jeffrey E. Decker"

(w) A new Section 31 is hereby inserted into the Agreement to read as follows:

"31. Property Rights. Notwithstanding anything expressly or implicitly in the Agreement or the Development Agreement to the contrary, the parties acknowledge and agree that Developer has the sole ownership and other property rights and interests in and Garage and the parking spaces therein and that the City and Landing Investments, and their successors and permitted assigns, do not and will not, by virtue of the Agreement or otherwise, have any ownership or other property rights or other interests (including those of a lessee or licensee) in and to the Project, the Garage or any of the parking spaces therein, including the Short-Term Parking Spaces; provided, however, that this provision shall not in any respect limit the remedies of the City and Landing Investments under this Agreement, including those remedies pursuant to Section 19(b) hereof."

4. Representations and Warranties. Each party represents and warrants to the other parties that this Amendment has been duly authorized, executed and delivered by such party and constitutes the valid, legal and binding obligation of such party enforceable in accordance with its terms.

5. Miscellaneous. This Amendment may be executed and delivered in counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. A facsimile copy of this Amendment and any signature thereon shall be considered for all purposes an original. Except as expressly amended hereby, the Original Agreement shall remain in full force and effect in accordance with its terms. In the event of any conflict or inconsistency between the Original Agreement and this Amendment, this Amendment will control and supersede the Original Agreement to the extent of such conflict or inconsistency. Purchaser and Developer hereby ratify and confirm the Original Agreement as herein amended.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Parking Rights Agreement effective as of the date first above written.

[signatures on next page]

"Developer"

PROJECT RIVERWATCH, LLC

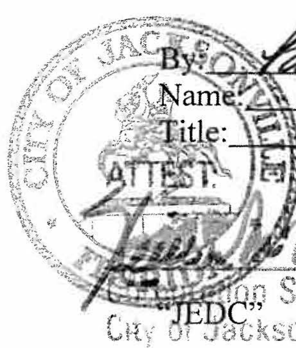
____
Name: ________________________

By:__________________________
Cameron Kuhn, Manager

____
Name: ________________________

"City"

CITY OF JACKSONVILLE, FLORIDA



____
Name: ________________________

By: Pam Markham
Name: John Peyton
Title: MAYOR

Pam Markham
Deputy Chief Administrative Office
For: Mayor John Peyton
Under Authority of:
Executive Order No. 06-07

ATTEST:

____
Name: ________________________

Corporation Secretary
City of Jacksonville

"JEDC"

JACKSONVILLE ECONOMIC
DEVELOPMENT COMMISSION

____
Name: ________________________

By:__________________________
Name:________________________
Title:________________________

____
Name: ________________________

[signatures continued on next page]

"Developer"

PROJECT RIVERWATCH, LLC

By:____________________________
Cameron Kuhn, Manager

Name: __________________________

Name: __________________________

"City"

CITY OF JACKSONVILLE, FLORIDA

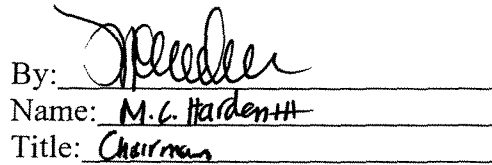
By:____________________________
Name:__________________________
Title:___________________________

Name: __________________________

Name: __________________________

"JEDC"

JACKSONVILLE ECONOMIC
DEVELOPMENT COMMISSION



By:____________________________
Name: M.C. Harden III
Title: Chairman

Name: __________________________

Name: __________________________

[signatures continued on next page]

"Developer"

PROJECT RIVERWATCH, LLC

By: ______________________
Cameron Kuhn, Manager

____
Name: Ashley Conkle

____
Name: Jeffrey E. Decker

"City"

CITY OF JACKSONVILLE, FLORIDA

By: ______________________
Name: ______________________
Title: ______________________

____
Name: ______________________

____
Name: ______________________

"JEDC"

JACKSONVILLE ECONOMIC DEVELOPMENT COMMISSION

By: ______________________
Name: ______________________
Title: ______________________

____
Name: ______________________

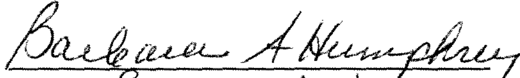
____
Name: ______________________

[signatures continued on next page]

"Landing Investments"

JACKSONVILLE LANDING INVESTMENTS, LLC

Name: ROBERT A. HECKIN



Name: BARBARA A. HUMPHREY

By:

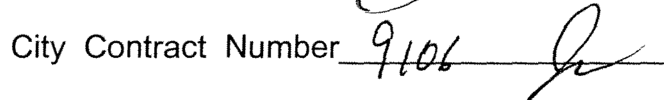
Name: ANTHONY T. SLEIMAN

Title: MANAGING MEMBER

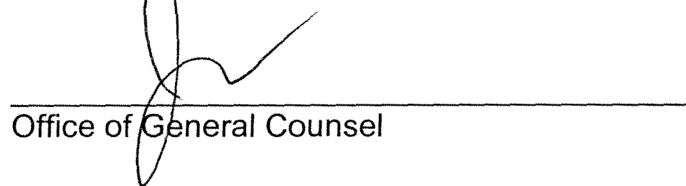
In accordance with the *Ordinance Code*, of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.

Director of Administration and Finance

City Contract Number 9106



Form Approved:



Office of General Counsel

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